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ABSTRACT

The hearings reported verbatim in this document occurred before the Congressional Committee on Interstate and Foreign Commerce during August 1976. They concern the committee's attempts to ascertain where the responsibility lies for the enforcement of equal employment opportunities and antidiscrimination laws in public broadcasting. They contain statements by 12 people, including Bella Abzug and Louis Stokes, representatives from New York and Ohio, respectively; John Cameron, of the Educational Broadcasting Facilities Program of the Office of Education; Martin H. Gerry, director of the Office for Civil Rights; Lawrence K. Grossman, president of the Public Broadcasting Service; Henry Loomis, president of the Corporation for Public Broadcasting; and Issie Jenkins, of the Equal Employment Opportunity Commission. Additional material related to the hearings and submitted for the record is included. (JM)

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ENFORCEMENT OF EQUAL OPPORTUNITY AND ANTI-DISCRIMINATION LAWS IN PUBLIC BROADCASTING

U S DEPARTMENT OF HEALTH EDUCATION & WELFARE
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HEARINGS

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

SECOND SESSION

ON

THE ENFORCEMENT OF EQUAL EMPLOYMENT OPPORTUNITIES AND ANTIDISCRIMINATION LAWS IN PUBLIC BROADCASTING

AUGUST 9 AND 10, 1976

Serial No. 94–139

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ENFORCEMENT OF EQUAL OPPORTUNITY AND ANTI-DISCRIMINATION LAWS IN PUBLIC BROADCASTING

MONDAY, AUGUST 9, 1976

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMUNICATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2123, Rayburn House Office Building, Hon. Lionel Van Deerlin (chairman) presiding.

Mr. VAN DEERLIN. The subcommittee will come to order.

Today the Subcommittee on Communications conducts hearings to ascertain where the responsibility lies for the enforcement of equal employment opportunities and antidiscrimination laws in public broadcasting.

This is a task of paramount importance—it is a commitment that my predecessor, the late Torbert Macdonald, established as a priority, and one that I wholeheartedly assume.

Moreover, the continuing debate about public broadcasting's responsibilities brought an unacceptable situation to light: the departments and agencies charged with enforcing the equal employment opportunity and antidiscrimination statutes have failed to carry out congressional intent. These hearings should constitute a thorough reexamination of all the factors.

While Congress did establish the Corporation for Public Broadcasting as a private corporation and not an industry watchdog, it is our collective duty to insure equal recruitment and advancement opportunities for all in the public broadcasting community.

We have assembled all the parties involved in an attempt to settle this jurisdictional dispute.

First we are going to hear from my colleague, Lou Stokes of Ohio, an outstanding and longtime leader in the fight for minority representation in public broadcasting.

Another colleague, Mrs. Bella Abzug, has been delayed en route from New York and will submit a statement in lieu of being heard [see p. 12].

Following this, prominent members of the public broadcasting community itself are scheduled to appear and they will be followed possibly tomorrow afternoon by representatives of the four Government agencies involved—Justice, the Department of Health, Education, and Welfare, the Equal Employment Opportunity Commission, and the Federal Communications Commission.

Mr. Stokes, if you will present your lead off testimony. We welcome you to the subcommittee.

STATEMENT OF HON. LOUIS STOKES, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. STOKES. Thank you very much, Mr. Chairman and members of the subcommittee.

Mr. Chairman, I would request permission to submit my formal written testimony for the record and then I would request that I be permitted to summarize that testimony for you this morning.

Mr. VAN DEERLIN. I think that is the most effective way of presenting the case, Mr. Stokes.

Mr. STOKES. Thank you.

Mr. Chairman, I have also relied heavily in my written testimony upon a document that is a study by the Citizens Communications Center, and it is entitled "Public Broadcasting and Equal Employment Opportunity Regulation—Where Does the Buck Stop?"

I would further request that that document and the appropriate appendices be made a part of my formal written testimony as a part of the record.

Mr. VAN DEERLIN. Without objection, your prepared statement will be made a part of the record [see p. 5] and the document referred to will be available to all of the members of the committee and will be retained in the subcommittee files.

Mr. STOKES. Thank you very much.

Mr. Chairman and members of the subcommittee, I am pleased to have been invited to present testimony on a growing and demeaning national disgrace—that is, grossly inadequate compliance with and enforcement of equal employment opportunity (EEO) and related Federal antidiscrimination laws within the public broadcasting industry.

Mr. Chairman, I want to commend you and the members of this subcommittee for carrying through on the commitment made by the late Torbert Macdonald, with reference to conducting oversight hearings on this very important subject. I know your own personal commitment which was further made on the floor of the House at the time that I sponsored an amendment to the bill that dealt with this subject, and I want to personally commend you for having kept that commitment and providing us an opportunity to speak to this subject.

Mr. VAN DEERLIN. Well, thank you, Mr. Stokes. As you know, it is important for members who feel as strongly as you do to keep the subcommittee's feet to the fire on an issue of this magnitude and you have done a superlative job in that direction but a very understanding job, too.

You have not been unfair to the subcommittee and you recognized some of the factors that did cause some delay in carrying out the original commitment.

Mr. STOKES. Thank you very much, Mr. Chairman.

Mr. Chairman, I wish to summarize my testimony as follows:

Firstly, the Corporation for Public Broadcasting (CPB) has full authority and responsibility to insure that the millions of dollars in Federal funds that it annually distributes to public radio and TV stations are used in compliance with applicable Federal civil rights laws and regulations.

Such compliance and enforcement activity neither offends first amendment protections nor converts CPB into a "Federal agency or department" in violation of the Public Broadcasting Act of 1967.

Available statistics and related data and information disclose rampant employment and related discrimination throughout the public broadcasting industry, aided and abetted by inadequate civil rights compliance and enforcement by relevant Federal departments and agencies, and CPB.

The most effective level and scope of compliance and enforcement can be achieved by a compliance delegation agreement between the Corporation for Public Broadcasting and HEW, utilizing the existing HEW administrative compliance enforcement system or mechanism.

Such Corporation for Public Broadcasting—HEW compliance and enforcement activity, Mr. Chairman, is mandated by Federal civil rights laws, the 5th and the 14th amendments to the U.S. Constitution.

Mr. Chairman, the Corporation for Public Broadcasting was created pursuant to the Public Broadcasting Act of 1967 and charged with developing a viable public broadcasting industry. The programing of CPB and its grantee public radio and TV stations was to constitute literally "an expression of diversity and excellence."

By authorizing substantial sums of Federal financial assistance, Congress necessarily meant for that "diversity and excellence" to be achieved and reflected through equal employment opportunity and nondiscrimination.

Instead, in recent years the Congress and the Nation have been treated to the untenable spectacle of CPB obstinately refusing to either comply with applicable Federal civil rights laws or enforce compliance with those laws by its public radio and TV grantees.

CPB has cynically wrapped itself in the, assumed, absolute protection from civil rights compliance and enforcement ostensibly afforded by the first amendment (Freedom of the Press).

It is clear, Mr. Chairman, that required compliance with and enforcement of Federal civil rights laws in no way constitute infringement upon first amendment protection against undue governmental control over substantive decisionmaking on views and news disseminated by CPB and the public broadcasting industry.

Otherwise, the Federal Communications Commission (FCC) is both illegal and unconstitutional. Conversely, failure to enforce compliance with those laws by both CPB and reluctant Federal departments and agencies results in the denial of the rights to equal opportunity and equal protection of the laws guaranteed by the 5th and 14th amendments to the Constitution.

The abject inadequacy of civil rights compliance and enforcement in public broadcasting is reflected in recent statistics which show, among other things, that :

Almost 50 percent of noncommercial public radio stations receiving Federal community service grant funds through the Corporation for Public Broadcasting, fail to employ any minority persons on a full-time basis.—30 or 16.2 percent of 145 CPB television grantees reporting do not employ a single minority group member full time in any capacity, and 58 or 31.4 percent have a percentage of minority full-time

employment falling below the minority representation in their service areas.

Some 66.7 percent of the individual TV stations in seven CPB-funded State TV networks in the South, the Northeast, and the Plains States of the Midwest employed no minority group members (1975 statistics).

Similarly, within CPB itself we find continuing insensitivity, if not outright hostility, to the requirements of equal employment opportunity and nondiscrimination.

None of the Corporation's top five officers is black.

Minority and women employees of CPB continue to be disproportionately clustered in the lower salaried, nonprofessional, and nontechnical positions.

CPB's operating affiliate, Public Broadcasting Service (PBS), has an equally dismal EEO record.

Of PBS's seven vice presidents, not one is black, or a member of any other minority group, although one is female.

Like CPB, its benefactor, PBS's minority and female employees are disproportionately clustered in lower paying, nonprofessional, and nontechnical positions.

Only 2 minority individuals serve with the 50 members of PBS's Board of Governors and Board of Managers and only 5 women.

Not a single PBS assisted public television station throughout the country is either managed by a black or owned by a predominantly black educational institution or organization.

Minority management and midmanagement personnel at PBS increased from 4 percent in 1973 to a mere 6.4 percent in 1975.

At National Public Radio (NPR), minority management represented 0 percent in 1973 and 0 percent in 1975.

There is 0 minority representation on the Board of Directors of the Association of Public Radio Stations (APRS).

It is thus clear, Mr. Chairman, that the promise and the reality of equal employment opportunity within the entire public broadcasting industry are poles apart. Only immediate corrective action by the Congress will make EEO a reality here rather than a cynical slogan mounted all too easily by those who have no intention of complying with the law.

Delegation of CPB's civil rights compliance and enforcement authority to HEW, by formal agreement, will get us moving in this area without creating additional layers of bureaucracy and without offending legal and constitutional protections.

Without this proposal, Mr. Chairman and members of the subcommittee, the Congress will be in the untenable position of unconstitutionally providing financial assistance to aid prohibited discriminatory conduct by the recipients of such financial assistance.

That will place the Congress, perhaps imminently, on a needless and witless collision course with the Supreme Court.

If Public Broadcasting is to achieve the status of excellence—indeed, if it is to become the congressionally mandated "expression of diversity and excellence," we must insure that equal employment opportunity and nondiscrimination become cornerstones of the public broadcasting industry.

I would be please, Mr. Chairman, to attempt to answer any questions that you or the members of the subcommittee might have.

[Testimony resumes on p. 11.]

[Congressman Stokes' prepared statement and attachment follow:]

STATEMENT OF HON. LOUIS STOKES, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. Chairman, and Members of the Committee, I am very pleased to have been invited to present testimony on a growing and demeaning national disgrace—i.e., grossly inadequate compliance with, and enforcement of, equal employment opportunity (EEO) and related federal anti-discrimination laws within the public broadcasting industry.

Perhaps, and only perhaps, Mr. Chairman, my appearance here today would have been unnecessary, had the Senate/House Conference retained a Civil Rights Amendment to the Public Broadcasting Financing Act of 1975 (P.L. 94-192), which was adopted by the House of Representatives on November 10, 1975. That Amendment, which I authorized and sponsored, was designed to make it clear that the Corporation for Public Broadcasting (CPB) and members of the entire Public Broadcasting Industry were absolutely, and without exception, subject to Titles VI and VII of the Civil Rights Act of 1964 (P.L. 88-352) and Title IX of the Education Amendments of 1972 (P.L. 92-318). It would have thus ended CPB's long-standing resistance to both complying with, and enforcing compliance with, these vitally important federal anti-discrimination laws by its public radio and TV station-grantees. The amendment failed of adoption in conference largely due to some rather strained and fanciful notions regarding CPB's legal status as a private non-profit corporation and its, assumed, absolute First Amendment protection, or "insulation", from both compliance with, and enforcement of, applicable Federal Civil Rights Laws. It is noteworthy that, notwithstanding, CPB did not decline some $78,500,000 in Federal funds in fiscal year 1976; nor is it likely to reject the $103,000,000 for fiscal year 1977, or the $107,000,000 for fiscal year 1978, or the $120,200,000 for fiscal year 1979, recently approved in conference on the Labor/HEW Appropriation Bill for fiscal year 1977 (H.R. 14232).

We have here, Mr. Chairman, the untenable spectacle of an organization annually receiving and distributing millions of Federal dollars, while simultaneously disclaiming any responsibility or authority to ensure that those funds are not used in violation of Federal anti-discrimination laws. CPB's responsibility and authority are clear—at least they were clear on December 1, 1969, when CPB's Board of Directors formally adopted a Title VI (Civil Rights Act of 1964) Compliance Program, entitled "Prohibition Against Discrimination Under Programs Receiving Financial Assistance From the Corporation For Public Broadcasting."

So what we have here before us today, Mr. Chairman, is a lack of Commitment on the part of CPB and the Public Broadcasting Industry, rather than any absence of legal authority or any encroachment upon First Amendment ("freedom of speech and of the press") privileges. It is patently erroneous and absurd for CPB to argue that the First Amendment exempts Public Broadcasting from complying with Federal Civil Rights Laws.

None of these civil rights laws either convert CPB into a "federal department or agency", in violation of enabling legislation, or in any way constitute governmental "prior restraint" or censorship of the press (media), in violation of the First Amendment as I earlier stated. Nor does civil rights compliance or enforcement within the Public Broadcasting Industry create the type of "governmental views" forbidden by the First Amendment. If a contrary conclusion should be interference or control over substantive decision-making (choice of news or reached, it would necessarily follow that the very being and regulatory activities of the Federal Communications Commission, with respect to commercial broadcasting, are both illegal and unconstitutional.

I suggest to CPB and to the Members of the Subcommittee that the First Amendment protection of freedom of the press, in this context, must be balanced against the rights to equal opportunity and equal protection of the laws guaranteed by the Fifth and Fourteenth Amendments to the Constitution.

These oversight or investigative hearings, today and tomorrow, are the direct result of a commitment made to me, to the other Members of the Congressional

Black Caucus, and to concerned civil rights and citizen action organizations, by both House and Senate conferees on the Public Broadcasting Financing Act of 1975.

Our purpose here is to examine very closely why there is a grave, substantial, and disgraceful lack of anti-discrimination compliance and enforcement within the Public Broadcasting Industry, with a view toward possible enactment of remedial legislation.

PROMISE OF PUBLIC BROADCASTING: EQUAL EMPLOYMENT OPPORTUNITY AND NON-DISCRIMINATION

Unfortunately, Mr. Chairman, I was not privileged to be a member of this august body, the Congress, on that happy day in November 1967 which saw enactment of the long-awaited Public Broadcasting Act of 1967 (47 U.S.C. 396).

That was the day on which the Congress presented to a proud and hopeful America, the birth and creation of the Corporation for Public Broadcasting (CPB), to develop the ultimate alternative to the educationally unresponsive commercial profit-oriented, broadcasting industry. That was the day on which we, the Congress, declared that:

It furthers the general welfare to encourage non-commercial educational radio and television broadcast programming which will be responsive to the interests of people both in particular localities and throughout the United States, and which will constitute an expression of diversity and excellence.

"An expression of diversity and excellence"—indeed, a beacon of the best democratic principles of equality of opportunity and equal sharing of the benefits of federal support, encouragement, and financial assistance, in the creative search for "diversity and excellence" in educational broadcasting. As stated by CPB in its comments of October 10, 1975, on the Federal Communications Commission's (FCC) proposed guidelines in re: *Non-Discrimination in the Employment Practices of Broadcast Licensees*, (FCC Docket No. 20550): ". . . One of the essential methods a station can employ to assure such programming diversity is to have a fully-integrated work force, comprised of persons who reflect the cultural and ethnic diversity of the broadcast service area. . . ." (CPB Comments, at P. 14).

It is therefore not surprising that in the recent FCC decision, in re: *Alabama Educational Television Commission* (FCC 74-1385), the FCC held that Public Broadcasting should meet an even higher standard of public accountability ("Public Interest") than commercial stations. Moreover, the Commission held that "Educational television" in particular, and Public Broadcasting in general, "has a paramount obligation to endeavor to serve significant minority needs in its service area." This obligation is "over and above what is expected of commercial stations", because of Public Broadcasting reserve spectrum allocations and public funding. Moreover, under the Communications Act, all broadcasting licensees are "Public Trustees" and all have an equal mandate to serve the same public interest (47 U.S.C. 309(a), 309(d)(1)(2), and 309(e).

How better, Mr. Chairman, to achieve these noble public policies, principles, legal and constitutional requirements, which gave congressional birth to CPB, than to ensure, "with all deliberate speed", non-discrimination in employment within the Public Broadcasting Industry, through compliance with Title VII of the Civil Rights Acts of 1964? How better to gain greater public and private sector participation and financial support, than by ensuring non-discrimination as to benefits on the basis of race, color, national origin, religion, or sex, in compliance with Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972?

RESULTS TO DATE

Notwithstanding the promise of equal employment opportunity, Mr. Chairman, a recent study and analysis of data submitted to the FCC by broadcast licensees (May 31, 1976),[1] reveals that:

> Almost 50% on non-commercial "public" radio stations receiving Federal "Community Service" grant funds through CPB, fail to employ *any* minority persons on a full-time basis.

[1] Bowie, Nolan A., Lloyd, Frank W. III, et al., "Public Broadcasting And Equal Employment Opportunity—Where Does the Buck Stop?" Citizens Communication Center, Washington, D.C. (August 1976).

30, or 16.2%, of 145 CPB television grantees reporting, *Do Not Employ A Single Minority Group Member Full Time In Any Capacity*, and 58 or 31.4% have a percentage of minority fulltime employment falling below the minority representation in their service areas.

Some 66.7% of the individual TV stations in 7 CPB-funded state TV networks in the South, the Northeast, and the plains states of the Midwest, employed *zero* minority group members. (1975 statistic).

Similarly, within CPB itself, we find evidence of continuing insensitivity, if not outright hostility to the requirements of equal employment opportunity and non-discrimination:

None of the Corporation's five top officers is black.

Only five of CPB's department heads are minorities, only three of whom are black, and they are the only minorities among the 35 top salaried CPB employees (Grade 9 and above).

CPB has deliberately created friction between minority groups and women by recently appointing two non-minority women to top level corporate positions, in violation of the spirit, if not the letter, of its own affirmative action plan.

Minority and women employees of CPB continue to be disproportionately clustered in the lower salaried, non-professional and non-technical positions.

Less than 33% of CPB's 15 member board of directors is composed of both minorities and women combined: There are now two minority females, but no minority male on the board.

The Public Broadcasting Service (PBS), CPB's operating affiliate, shows to no better advantage in the area of EEO:

Of PBS's seven vice-presidents, not one is black, nor a member of any other minority group, although one is female.

Like CPB, its benefactor, PBS's minority and female employees are disproportionately clustered in lower paying, non-professional and non-technical positions.

Only two minority individuals serve with the 50 members of PBS's Board of Governors and Board of Managers, and only five women.

Not a single PBS-assisted public TV station throughout the nation is managed by a black.

Minority management and mid-management personnel at PBS increased from 4.0% in 1973 to a mere 6.4% in 1975.

At National Public Radio (NPR), minority management and mid-management represented 0.0% in 1973 and 0.0% in 1975, while decreasing in the technical professional category during that same period from 12.7% to 10.3%.

There is 0.0% minority representation on the Board of Directors of the Association of Public Radio Stations (APRS).

It is thus clear, Mr. Chairman and Members of the Committee, that the promise and the reality of EEO within the entire Public Broadcasting Industry, are poles apart. And who will bring them together?

Not me, says the Corporation for Public Broadcasting, for we (CPB) are both protected and prevented from doing so by the First Amendment; but, of course, don't you dare think of stopping that flow of millions of dollars in Federal funds into our coffers annually!!!

Perhaps, then, the Federal Communications Commission (FCC), under its recently promulgated EEO guidelines regulating its licensee radio and TV stations, both commercial and non-commercial?

Hardly! For we were amazed quite recently to learn that the new rules, by raising the affirmative action program filing exemption (from 5 employees or less, to 10 employees or less), "Approximately 93% of non-commercial radio would be excluded, and approximately 36% of non-commercial television would be excluded . . .", from a written EEO program requirement.[5]

Moreover, the FCC very quickly, and very cogently, reminds us of the U.S. Supreme Court's recent holding that "a general grant of authority to regulate an industry in the "Public Interest" does not authorize the regulation of employment discrimination *per se*, and that discriminatory practices may be considered

[5] See Statement of Commissioner Benjamin L. Hooks, concurring in part; dissenting in part, In Re: Non-Discrimination In The Employment Practices Of Broadcast Licensees, FCC Docket No. 20550 (July 2, 1976), p. 3, Citing CPB Comments, p. 13.

only to the extent that such conduct is directly related to the agency's particular statutory responsibilities."[3]

We can thus forget about FCC as the primary enforcer of EEO compliance within the Public Broadcasting Industry.

Then, why not the Equal Employment Opportunity Commission (EEOC)? Regrettably, the recent history of that important agency, with its ever mounting backlog of cases, gives us little confidence in its early and effective entry into this difficult arena. You may be assured, however, that I shall continue to be actively involved in the effort to provide the additional resources needed by EEOC to get on with the job at hand.

Then, perhaps, the Department of Health, Education and Welfare (HEW)? After all, it does make educational broadcasting facilities construction grants—although apparently few to predominantly minority educational organizations and institutions, to date. Whereas HEW clearly has Title VI (anti-discrimination) compliance enforcement responsibility with respect to its grantees, at least for the brief duration of the construction grants, it has not dealt effectively with EEO and discrimination problems. Moreover, given HEW's recent retreat from its Title VI compliance enforcement responsibilities in other areas, we can have little confidence in, or hope for, relief from that quarter; at least not without a new and different enforcement thrust.

RECOMMENDATION

As I see it, Mr. Chairman, we have three options:

(1) Amend the Public Broadcasting Act of 1967 (47 U.S.C. Section 396), making it clear that CPB and its grantees are subject to Titles VI and VII of the Civil Rights Act of 1964, and Title IX of the Education Amendments of 1972, and providing an entirely new compliance review and enforcement mechanism;

(2) Amend each of the aforementioned statutory provisions, directly, making CPB and its grantees subject to coverage, and providing an entirely new compliance review and enforcement mechanism;

(3) Direct CPB and HEW, through appropriate committee report language, to enter into an agreement delegating to HEW, CPB's Title VI compliance review and enforcement authority, with ultimate responsibility for enforcement remaining vested in CPB.

Options 1 and 2 are least desirable in that they imply the absence of existing Federal Civil Rights coverage of CPB and its grantees. Their continuing efforts to resist both compliance and enforcement would gain a measure of credence should the Congress refuse to adopt either of the measures on the basis that they are duplicative or redundant.

The third option is by far the most viable in that it comports with Senate Appropriations Committee Report language offered by Senator Edward W. Brooke (R-Mass.) and adopted by the full Senate in approving the Labor, HEW Appropriation Bill, FY 1977 (H.R. 14232). This language holds that:

"The corporation for Public Broadcasting has an affirmative duty and responsibility to make certain that its own operations are in compliance with titles VI and VII of the Civil Rights Act of 1964 (Public Law 88-352) and title IX of the Education Amendments of 1972 (Public Law 92-318). In addition, the Corporation is expected to take a leadership role within the public broadcasting community to ensure that all recipients of Corporation funds are in compliance with titles VI and VII of the Civil Rights Act of 1964 and title IX of the Education Amendments of 1972.

"The Committee strongly suggests that the Corporation consider ways to improve the enforcement of compliance with the aforementioned civil rights statutes by the recipients of Corporation funds. In this regard, the Corporation should consider the delegation or referral of enforcement of these laws and regulations to the appropriate governmental agency, or agencies. The Corporation should begin immediately to improve its own internal monitoring procedures and consider the development of a precertification process for public broadcasting entities to assure that recipients of Corporation funds are in compliance. However, none of these suggested approaches is to be considered mutually exclusive.

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[3] FCC Report And Order In Re: Non Discrimination In The Employment Practices Of Broadcast Licensees, FCC Docket No. 20550 (July 28, 1976), Para. 8, citing NAACP v. Federal Power Commission, 44 U.S.L.W. 4659 (May 19, 1976).

"The Committee will expect a quarterly report on the Corporation's efforts and accomplishments in this area. The first report will be due 90 days after enactment of this bill." (Senate Report No. 94-997, 94th Cong., 2d Sess., p. 124 (June 26, 1976).)

Option 3 also comports with the spirit of a civil rights amendment to that same bill, which I authored and sponsored, and which was adopted by the House of Representatives.[1] While it did not speak directly to enforcement, it nonetheless provides that none of the funds appropriated to the Public Broadcasting Fund for CPB "* * * shall be available or used to aid or support any program or activity excluding from participation in, denying the benefits of, or discriminating against any person in the United States, on the basis of race, color, national origin, religion or sex."[2]

Thus, the combination of the House Amendment and the Senate Report language, provides a very substantial basis for the adoption of Option 3.

Moreover, the Justice Department very recently affirmed its earlier position that CPB already has a legal obligation to enforce compliance with Title VI of the Civil Rights Act by CPB's grantees. In a letter to the Chairman of this Subcommittee, Mr. Van Deerlin, dated June 22, 1976, Assistant Attorney General J. Stanley Pottinger, head of that Department's Civil Rights Division, advised that:

"The primary responsibility for Title VI enforcement, if it developed in a specific instance that Title VI did cover a recipient's employment practices, rests with the CPB and with HEW. We have previously advised the CPB of our view that it is subject to the provisions against discrimination contained in Section 601 of Title VI, but is not subject to the rulemaking requirements of the Act contained in Section 602. *We have also indicated to the CPB that its current policy of relying solely upon determination of discrimination by Courts and federal agencies is an inadequate approach to Title VI enforcement.* Recognizing that a large number of recipients of CPB assistance are radio and television stations owned by schools or colleges, and therefore subject to review for Title VI compliance by the Department of Health, Education and Welfare, we have indicated our opinion that the most effective way for CPB to monitor the Title VI compliance of those it assists is through an *agreement* under which *HEW would perform the actual compliance reviews, with determinations of noncompliance to be made by CPB.*

"*Title VI enforcement procedures as to public broadcasters receiving federal financial assistance from HEW, or received under a CPB compliance delegation to HEW, would be those established by the HEW Title VI regulations appearing at 45 C.F.R. 80 and 81.*" (Emphasis added). (Attachment A.)

Adoption of Option 3, as recommended by the Justice Department, would thus avoid even *implicitly* converting CPB into a "federal department or agency" in violation of the Public Broadcasting Act of 1967 (47 U.S.C. 396, subsection (b)), as well as the legal or administrative necessity for establishing yet another administrative Title VI enforcement system or mechanism.

The Justice Department would still be required to enforce compliance with Title VII (EEO) by state and local governments receiving CPB grants, and EEOC would continue to have that responsibility with respect to CPB's non-public agency grantees. The Justice Department would also continue to be responsible for coordinating the enforcement of Title VI, under Executive Order 11764. However, both CPB and HEW would be responsible for EEO enforcement under Title VI, to the extent that employment discrimination by CPB or HEW grantee radio and TV stations results in forbidden racial, religious or sex discrimination (Justice Department Letter, *supra*). The FCC would, of course, be required to enforce its employment discrimination guidelines, to the maximum extent permitted by its regulatory mandate.

CPB's Title IX (Education Amendments of 1972) anti-sex discrimination compliance and enforcement authority would necessarily be included in the required CPB/HEW compliance agreement, utilizing HEW's compliance review resources and its administrative enforcement procedures and system.

Mr. Chairman, I suggest to those who plead or predict undue administrative burdensomeness in this proposal, that appropriate measures can and should be taken by all concerned agencies, and CPB, to streamline and refine the sys-

[1] Congressional Record, June 24, 1976, p. H6053.
[2] Ibid.

tem, to avoid any such condition—consistent with the achievement of required goals and objectives.

I would also remind the members of this Subcommittee, and the public broadcasting inquiry, that the continued inadequacy of federal civil rights compliance and enforcement, with respect to the distribution and use of millions of dollars in federal funds, constitutes an abrogation of constitutional rights and responsibilities. Indeed, the proposal I offer here is made necessary by the recent decision in the Federal District Court case of *Green v. Connally*, 330 F. Supp. 1150 (DC DC, 1971), a case that was *affirmed* by the U.S. Supreme Court, 404 U.S. 997 (1971). That case held that the Internal Revenue Service cannot legally grant tax exemption or the deductibility of contributions to Section 501(c)(3) "charitable" institutions, such as private schools, that have a racially discriminatory admission policy. That decision was premised, in part, upon the Supreme Court's earlier decision in *Bolling v. Sharpe*, 347 U.S. 497 (1954), which held that Federal Action in support of segregated schools violates the Fifth Amendment of the United States constitution.

The Supreme Court has thus made it clear that the Federal government cannot constitutionally provide financial assistance to segregated schools, either public or private. It necessarily follows that the federal funds annually appropriated for Public Broadcasting grantees, cannot be used to support racial, ethnic or sex discrimination, either in employment or with respect to the services and benefits that accrue through the receipt and use of federal financial assistance.

Without my proposal, Mr. Chairman, the Congress will be in the untenable posture of unconstitutionally providing financial assistance to aid prohibited discriminatory conduct by the recipients of such financial assistance. That will place the Congress, perhaps imminently, on a needless and "windless" collision course with the Supreme Court.

If Public Broadcasting is to achieve the status of excellence—indeed, if it is to become the Congressionally mandated "expression of diversity and excellence", we must ensure that equal employment opportunity and nondiscrimination become cornerstones of the Public Broadcasting Industry.

[Attachment A]

DEPARTMENT OF JUSTICE,
Washington, D.C., June 22, 1976.

HON. LIONEL VAN DEERLIN,
Chairman, Subcommittee on Communications, U.S. House of Representatives, Washington, D.C.

DEAR CONGRESSMAN VAN DEERLIN: The letter of April 15, 1976 from the late Congressman Macdonald to the Attorney General requesting information for possible use in hearings which your subcommittee plans to hold on equal employment opportunity policies in the area of public broadcasting has been referred to me for response. Please excuse our delay in responding.

The Equal Employment Opportunity Act of 1972 (Public Law 92-261, approved March 24, 1972) transferred the authority to bring suit under Title VII of the Civil Rights Act of 1964 to eliminate patterns or practices of discriminatory employment practices in private industry from the Attorney General to the Equal Employment Opportunity Commission, effective two years thereafter. See 707(e), 42 U.S.C. 2000e-6(e). Subsequent to March 24, 1974, therefore, our litigation responsibilities under Title VII have been limited to state and local governments and under Executive Order 11246, to Federal contractors and subcontractors. Since that date we have not exercised any equal employment opportunity responsibility in the area of the broadcasting industry.

The Attorney General has responsibility, under Executive Order 11764, for coordinating the enforcement of Title VI of the Civil Rights Act of 1964. However, Title VI would not normally be applicable to equal employment opportunity within the public broadcasting community, because Title VI of the Civil Rights Act of 1964 does not authorize action with respect to any employment practice except where a primary objective of the Federal financial assistance is to provide employment or where the employment practices within a federally assisted program cause discrimination with respect to beneficiaries or potential beneficiaries of the assisted program. Federal financial assistance provided to public broadcasters through the Corporation for Public Broadcasting (hereinafter CPB) or through the Department of Health, Education and Welfare does not

appear to have employment as a primary objective. However, the possibility does exist that employment practices within public broadcasting programs which are receiving federal assistance might cause discrimination with respect to beneficiaries of the program. See *NAACP v. Federal Power Commission*, U.S. (S. Ct. No. 74-1608, May 19, 1976) note 7.

The primary responsibility for Title VI enforcement, if it developed in a specific instance that Title VI did cover a recipient's employment practices, rests with the CPB and with HEW. We have previously advised the CPB of our view that it is subject to the provisions against discrimination contained in Section 601 of Title VI, but is not subject to the rulemaking requirements of the Act contained in Section 602. We have also indicated to the CPB that its current policy of relying solely upon determination of discrimination by Courts and federal agencies is an inadequate approach to Title VI enforcement. Recognizing that a large number of recipients of CPB assistance are radio and television stations owned by schools or colleges, and therefore subject to review for Title VI compliance by the Department of Health, Education and Welfare, we have indicated our opinion that the most effective way for CPB to monitor the Title VI compliance of those it assists is through an agreement under which HEW would perform the actual compliance reviews, with determinations of noncompliance to be made by CPB.

Title VI enforcement procedures as to public broadcasters receiving federal financial assistance from HEW or reviewed under a CPB compliance delegation to HEW, would be those established by the HEW Title VI regulations appearing at 45 C.F.R. 80 and 81.

HEW and CPB could most appropriately supply figures as to their staffing levels and annual caseload of EEO complaints regarding public broadcasters.

Please feel free to write or call me if you believe that we can provide you with any additional information with respect to the planned hearings.

Sincerely,

J. STANLEY POTTINGER,
Assistant Attorney General,
Civil Rights Division.

MR. VAN DEERLIN. Thank you for a very comprehensive statement, Mr. Stokes.

Your comparisons between 1973 and 1975 were rather telling. Were the other employment figures that you gave us based on 1975? That is the last year, I suppose, on which you have figures.

MR. STOKES. We have endeavored to bring our figures up to the latest available figures. My staff has been in touch with PBS and these represent the latest available figures in 1976.

MR. VAN DEERLIN. I see, because I would have anticipated that there might have been some response to earlier representations that were made on this matter I think it was in November of last year. That is, the latter part of the year that has passed since then and I was hopeful and remain hopeful, that there may be some indication of improvement, although you see very little at this point.

MR. STOKES. Well, with reference to the Corporation for Public Broadcasting, we have had occasion during the period since this past November to meet with them and they have submitted figures which indicate some movement in that direction in terms of attempting to show progress.

The basic difficulty in terms of progress lies more with the entire system, the grantees who are licensed and who obtain funding from the Corporation for Public Broadcasting where we see very little progress being made.

MR. VAN DEERLIN. And are, for the most part, educational institutions and State governments, I suppose.

MR. STOKES. Yes, sir, that is correct.

Mr. VAN DEERLIN. You would urge the Congress to revise CPB's mandate in this regard rather and compel them to enforce the law on equal opportunity rather than leave it to any of the other agencies established for that purpose?

Mr. STOKES. Well, I think, Mr. Chairman, we are in this position. The Corporation for Public Broadcasting is the actual recipient of Federal funds and the problem has arisen as a result of the fact that the Corporation contends it is a private, nonprofit corporation and is insulated under the First Amendment and, therefore, by virtue of being a private corporation it is not a Federal agency and that Federal laws such as titles VI and VII of the Civil Rights Act of 1964 and title VII and title IX of the Education Amendments of 1972 are not applicable to them in so far as they are not a Federal agency. Therefore, they contend, they have no real responsibility in terms of securing compliance and enforcement with reference to Federal law which prohibit discrimination with respect to the use of Federal funds.

Therefore, we find ourselves in the awkward position of seeing the rampant employment discrimination which occurs throughout the public broadcasting system as a result of the Corporation saying that once we receive Federal funds, they are no longer Federal funds, they become private funds.

Therefore, what we are saying is that all of the evidence that we have, including evidence which I think has been submitted to you by the Justice Department, does indicate that the Corporation for Public Broadcasting would have certain civil rights responsibility under title VI of the 1964 Civil Rights Act and, therefore, they ought to, in conjunction with HEW, the Office of Civil Rights, perform some enforcement and compliance activity to insure that Federal funds are not used in a discriminatory manner.

Mr. VAN DEERLIN. Majority counsel, Mr. Shoosban.

Mr. SHOOSHAN. Thank you, Mr. Chairman.

I have no questions.

Mr. VAN DEERLIN. Mr. Coleman.

Mr. COLEMAN. No questions.

Mr. VAN DEERLIN. Thank you for this valuable leadoff testimony.

Is there a representative of Mrs. Abzug here?

If not, the Chair, without objection wishes to place in the record, as though read, a statement from Congresswoman Bella Abzug, of New York.

STATEMENT OF HON. BELLA S. ABZUG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Ms. ABZUG. Mr. Chairman, once again this committee is holding hearings on the well-documented problems of discrimination at the Corporation for Public Broadcasting (CPB). In light of the opposition of the members of this committee to amendments offered by Representative Stokes and myself to definitely bring CPB within the ambit of the civil rights laws (titles VI and VII of the 1964 and title IX of the Education Amendments of 1972) the committee has an affirmative responsibility for enforcing the law with action to resolve the interagency dispute and insure that some agency is given the respon-

sibility for enforcing the law with regard to the Corporation and its grantees.

Statistics show that the Corporation for Public Broadcasting has not complied with Federal equal opportunity laws. The "Report of the Task Force on Women in Public Broadcasting" states that women are underrepresented in the noncommercial industry. For example, in public television, women were employed in 30 percent of all jobs; in public radio, only 26 percent of the employees were women. And most of these women held low position jobs. The last seven top level positions that have opened up at CPB have been filled by white males. Other top level positions are heavily dominated by men. In public radio, only 4 percent of the general managers were women, and, correspondingly, in public television, only 3 percent of the managers were female. Twelve percent of the station managers in radio are female, but only 2 percent hold the same position in noncommercial television, and 8 percent in joint facilities. Discrimination is also apparent in promotion practices. In radio, only 3 women reached the highest levels of employment in 10 years compared to 31 men. The statistics are more incriminating of public television—3 women as compared to 61 men. A more recent study, published this month by the Citizens Communications Center, demonstrates the underrepresentation of minorities in public television:

"Of the 185 individual television stations receiving CPB grants, 145 or 78.4 percent show 1976 employment statistics which raise questions regarding the stations' compliance with FCC equal employment opportunity rules and policy. Minority full-time employment at 30 of the station grantees (or 16.2 percent) was zero. Another 58 stations or 31.4 percent employed minority group members full-time in a percentage less than the representation of minorities in the population of the service area. Ten stations employed some minority group members full-time, but none in the higher pay category jobs. Forty-two stations or 22.7 percent were found to employ minority group members in a percentage greater than represented in the service area." [1]

The task force was unequivocal in its findings: it stated that "women, regardless of education and length of service in the industry, are disproportionately employed in the low status secretarial and clerical positions and men in engineering, midlevel, and high-level managerial jobs." [2] In the past, women have been virtually excluded from decision-making in public television and radio. However, this year a number of positions on the board of the Corporation will be vacated. This is an opportunity for the Corporation to bring women and minorities into high level positions.

Programming equally concerns us here. The short history of one show will demonstrate the treatment of "women-oriented" programs. "Woman" was successfully shown last season at 10:30 p.m.; this season, however, the programing committee of CPB has switched it to 11 p.m., where it must compete with the numerous and popular news programs on commercial television. And the problem is even more deep-rooted than is indicated by this example. After monitering a week of public

[1] Bowie, Nolan A., Lloyd, Frank W. III, et al., "Public Broadcasting and Equal Employment Opportunity—Where Does the Buck Stop?", Citizens Communication Center, Washington, D.C. (August 1976), p. 65.

[2] Isber, Caroline and Cantor, Muriel, "Report of the Task Force on Women in Public Broadcasting," (October 1975), p. 57.

television broadcasting, the task force found that women were not so much stereotyped as ignored. For example, women appeared on only 15 percent of the adult programs viewed and 36 percent of the programs excluded women completely. Furthermore, one of 28 programs specifically addressed a "woman's issue" and 11 excluded women entirely. After viewing 11 public affairs programs, the task force found that 7 had no female participants. In the remaining programs, only 11 women were represented as compared to 90 men. Minority women are even more discriminated against. For example, in the monitored week of programing, the task force found that of 236 participants, only 4 black women were represented. Public radio is no better. Although there are more women on public radio than on public television, in a week sample, only 10 percent of the announcers were found to be women.

Equal opportunity employment practices must be implemented immediately for CPB to meet its mandate to express true "diversity and excellence." The Corporation, however, claims that it has neither the responsibility nor the personnel to enforce equal opportunity measures. Who, then, is to take the responsibility for enforcement?

The Federal Communications Commission (FCC), by its power to regulate broadcasting licenses, could be responsible for the implementation of affirmative action programs. However, under its law regulations defining affirmative action filing exemption levels, "93 percent of 'noncommercial radio 'and 36 percent of noncommercial TV stations" would not file an Equal Employment Opportunity program along with its annual employment report, and would therefore be excluded from a detailed review. The FCC does acknowledge, however, that if the station's employment program is affirmative action oriented, then the station has fulfilled the intent of their obligations. If the station's report does show evidence of employment discrimination, then the FCC may act. However, here again the FCC does not adequately enforce antidiscrimination laws. The FCC complains that its means of defining discrimination is to compare the station's employment profile to the statistical data of the local population. If the station's representation of minorities and women are found to be below that of the community, then the FCC may question its hiring practices. However, the FCC mistakenly believes that the courts will not accept this kind of statistical comparison as a prima facie case of discrimination. The FCC is also responsible for the programing practices of the station and must consider, in its review, whether the station serves the needs and interests of the community.

If the FCC will not enforce Federal equal-employment opportunity laws, then the Equal Employment Opportunity Commission (EEOC), in its administration of title VII of the Civil Rights Act of 1964, would be directly responsible for the employment practices of the CPB and its affiliates. However, stations with under 15 employees are not under their authority, and therefore the EEOC would be responsible for fewer public broadcasting stations than the FCC. In fact, their authority would not include the majority of the public TV and radio stations. Moreover, there has been considerable dispute as to whether CPB is a private or public entity. As a public corporation, it is beyond the reach of the EEOC. Other public agencies have their own title VII compliance procedure, with cases ultimately going to the De-

partment of Justice. The difficulty, in this instance, is that CPB has not assumed any responsibility for the enforcement of title VII.

The Department of Health, Education, and Welfare oversees title VI of the Civil Rights Act of 1964, and title IX of the education amendments of 1972. However, the Department claims responsibility for employment discrimination only when that discrimination is directly related to the expenditure of Federal assistance funds. As CPB is given a considerable sum of Federal money, I would assert that HEW is responsible for the programing practices of public radio and TV stations, and may or may not be responsible for these stations employment practices. However, the Department firmly denies its authority over the funds dispersed by CPB, although the Office for Civil Rights may investigate complaints of discrimination. If upon investigation the complaint is found to be legitimate, the Office first seeks voluntary compliance before resorting to enforcement procedures which often lead to the Justice Department. The Office of Education may also enforce antidiscrimination laws as it disperses funds for educational broadcasting. However, these are construction grants and greatly limit the scope of the Office's authority.

Although the different offices of the Department of HEW have the authority to investigate the employment programs of the CPB, no one office has unquestioned responsibility for these practices. Therefore, we must look elsewhere to insure that equal employment opportunity programs are enforced.

The Justice Department is responsible for the enforcement of titles VI and VII of the Civil Rights Act of 1964. While HEW oversees title VI, the Department of Justice has the authority to bring individual suits to enforce it. The Department is also responsible for the enforcement of title VII with regard to the public agencies and it may act on cases referred to it by the EEOC.

The Justice Department, as the law enforcing arm of the Government, must take a more active role. They should review the employment practices of CPB, investigate complaints and oversee enforcement of the law by CPB over its grantees.

I also recommend that CPB be required to submit semiannually a report containing its employment goals and timetables which outline the steps it has taken to meet these targets. For several years the corporation has been aware of the dissatisfaction with their employment practices, yet there has been little marked improvement. I suggest that unless remedial action is forthcoming, I might be forced to reconsider my support for long-range funding for the Corporation.

Mr. VAN DEERLIN. Is Mr. Pottinger in the room?

Our next witness will be the president of the Corporation for Public Broadcasting, Mr. Henry Loomis.

STATEMENT OF HENRY LOOMIS, PRESIDENT, CORPORATION FOR PUBLIC BROADCASTING

Mr. LOOMIS. Good morning, Mr. Chairman.

Mr. VAN DEERLIN. Good morning, and welcome to the subcommittee.

Mr. LOOMIS. I welcome this opportunity to try to clarify CPB's position in this complex and often seemingly contradictory area of civil rights and public broadcasting.

I prepared a fairly lengthy formal statement with appendices, and with your permission I would request that it be placed in the record (see p. 221) and that I try to summarize the key points. I will not include any of the statistics which are in my formal statement, though I will perhaps make a point that I disagree with some of Mr. Stokes' statistics which I believe are slightly outdated because the Corporation has made major changes within the last 6 months which I will show you.

The first thing that I would like to stress, Mr. Chairman, is that CPB unequivocally supports all compliance with and enforcement of all equal opportunity laws and regulations throughout public broadcasting. There are times people question whether we are really supportive and I can assure you that the CPB Board of Directors has been crystal clear in a series of resolutions over the last several years that demonstrate its wholehearted support of the goals of civil rights and equal opportunity.

There is a second area where there is some misunderstanding. CPB itself, is clearly subject to the provisions of title VII, because it has more than 15 employees and title VI, Executive Order 11246 and revised order No. 4, and title IX of the Education Amendments of 1972.

Sometimes it is alleged that we state that we ourselves are not subject to these laws, and that is not the case. The Corporation itself, is subject, there is no question on that.

Furthermore, we believe that CPB is in compliance with these laws. We have an affirmative action plan, which includes a work force analysis, and goals and time tables. In fact, we have already met the six goals of our first affirmative action plan and we are in the process of preparing a new one.

CPB minority and female employment has achieved parity with labor force figures in all six categories at the three levels of employment.

For example, as of June 30, of this year, as far as our minority employees are concerned we have 40 percent representation in our class 1, the clerical level, while the District of Columbia metropolitan labor force availability statistic is 25 percent, of our class 2 professional and technical employees, 24 percent are minority, while the national force availability is 11 percent; and of the highest, the management level, 20 percent are minority while 7 percent is the Labor Department's national availability figure.

Now, there is a third area in which there is some confusion. CPB requires all of its contractors and grantees to comply with all equal opportunity laws applicable to them—Federal, State, and local. This is a contractual agreement, and it is agreed to by all recipients of any grants or contracts from the corporation. All recipients are likewise informed that CPB's funds will cease if any authorized government agency or court finds that they are not in compliance with any of these laws.

They are given 30 days to show cause that the assistance should be terminated, and there is a complex procedure outlined in each grant or contract which they have executed.

Fourth, CPB is not a Government agency or department. As you well know, Mr. Chairman, this committee which was so key in the

establishment of the Corporation stated that one of the essential reasons for the creation of the Corporation was the necessity to have a private nonprofit corporation to receive the Federal money and disburse it among the varying public broadcasting entities based on the judgments of its board of directors.

Congress stated unequivocally that CPB was not to be a Government agency. This has been upheld recently in a Federal court decision in the U.S. Court of Appeals in the District of Columbia. CPB, therefore, cannot be or act like a Government agency for some purposes and be private for others.

Therefore, we believe that CPB cannot judge or enforce compliance by others with respect to any law or Government regulation. We believe this is solely the function of the appropriate Government department or agency.

We believe that our only appropriate course is to withhold all our funds from any recipient judged not to be in compliance by any court or appropriate Government department.

Fifth, CPB attempts to work with Government departments in order to increase the effectiveness of their compliance and enforcement activities. For example, we have made a lengthy filing before the FCC giving our views on what their EEO requirements ought to be. Incidentally, this is attached as an appendix to my formal statement.

Unfortunately, the final FCC ruling was considerably at variance with our suggestions. We suggested that every broadcaster be subject to EEO compliance. The FCC in its wisdom has said that only those with more than 10 employees, and more than 50 employees for another case, come under their EEO enforcement jurisdiction.

This means that the vast majority of the radio stations and many of the public television stations don't come under the FCC's own rules. We think this is a mistake.

We made a series of other suggestions, all of which would tend in our judgment to make compliance more effective and at the same time not put an undue administrative or paper burden on the stations.

Another area in which we have sought to be of assistance to the FCC is in the ascertainment area—ascertainment of the community's needs. This is certainly allied with EEO considerations—it is not employment as such, but employment certainly affects programming—programs, as Mr. Stokes said, problems of programs of quality and diversity providing such programs which is one of the major functions of public broadcasting.

We have promptly referred, as we said we would in all our contracts, complaints that come to us to what appears to be the appropriate Government department. We have only had two complaints against the corporation, one of which has since been dropped and the other, incidentally, was by a white male. It was one of reverse discrimination.

One complaint was sent to us about alleged noncompliance of another public broadcasting entity. That was immediately forwarded to EEOC.

CPB aids Government departments by gathering and refining statistics. One of the things that became clear in our first testimony on this subject several years ago was that the statistics that we had

available to us were inadequate. Definitions were fuzzy, different people had different definitions. The numbres did not add, they were not accurate. Varrying people were taking different surveys at different times under different ground rules.

We have exerted a lot of effort in trying to get uniform statistics that are reliable and are current. Again, this is one of the areas in which we tried to work with the FCC. We feel that some of the job descriptions, for example, in their form 395 are not really designed for or related to the average jobs in broadcasting.

We are working to better define these jobs. We had hoped to work with the FCC to have common job descriptions. We are going ahead now on our own since the FCC has chosen not to alter its job description form.

We, of course, publish this data widely and we feel that this data helps the Congress and any other individual or entity that is concerned with this area. Our hope is that this data will be widely used so that we can at least discuss the problem based on the same data.

Frequently we find ourselves talking past each other because something is based on what we believe to be inaccurate or outdated data.

I should point out that these reports are jointly published by us and HEW. We work with HEW very closely in this and in obtaining other data, including personnel statistics about public broadcasting.

The sixth area, CPB works with the licensees to help them improve their EEO performance. I believe that our statistics show that there has been steady improvement. There is still a long way to go in the improvement of the employment profile of the entire industry, but there is steady improvement and we hope to be able to help the licensees speed up this improvement.

You will find in the annual report of the Department of Human Resources Development—July 1, 1976, which our board has requested and which is one of the attachments to my statement,[1] a fairly detailed description of the many things that the corporation has done trying to assist licensees. Let me just outline a few.

For several years we have had minority training programs and we have just commenced a women's training grant program. These are projects that are half funded by the corporation and half funded by the station. This fiscal year we will have spent $270,000 for it and we expect that to double in 1977.

We have prepared an ascertainment handbook. This is a handbook made available to the stations to help them perform ascertainment in an economical manner. It is a how to book. It tells how to get the most information per buck depending on whether you are a big station in a big urban city or a small station in a rural area and so forth. Different techniques are required.

We are spending about $100,000 jointly with eight stations where, again, we divide the costs to do the research on how to conduct ascertainment. It will provide information on how to find minority group leaders, who are not always those that are the most vociferous, how to compare telephone and public opinion surveys; again to try to ascertain and find the best method of getting data at the cheapest price for the stations.

[1] The annual report may be found in the subcommittee's files.

With PBS we are working actively in a really complex program which I think has great promise. Its rather weird name is "Area Pop." The purpose of this is to try to find out precisely the composition of the population in the area covered by the broadcaster, which frequently does not coincide with a political boundary of a city or a county or something of that nature.

So we will be working with the Census Bureau and others to try to get the precise breakdown of the population within the listening or viewing area of a television station or radio station.

Mr. VAN DEERLIN. Might this be with a view to have some sort of quota approach?

Mr. LOOMIS. Well, I would hope we would have a goal approach rather than a quota—goals not only for employment but also particular programming. This is primarily a programing concept but it will obviously, help with the employment problem as well.

We are working with varying methods to try to get more information and analyses from the statistics that we have gathered, particularly to help individual stations and individual situations.

Now the data is primarily useful in broadly looking at many stations at once. It is hard to develop a system that is meaningful when many stations have very small numbers of employees.

We are just finishing a handbook on how to start a television or radio station. We hope that this will be of particular assistance to minority groups so that they can be efficient in their efforts to get support and to find out what is required.

We are working and have worked with black universities, for example, in trying to start radio stations. We have worked with a Latino consortium in the Southwest. We have funded a conference where they came together and had much mutual benefit. Their exchange of programs will be substantially increased as a result of their conference.

We, PBS and Radio are all seeking funds from other government sources particularly the Labor Department and the CETA program, because we feel that these funds are appropriately used in public broadcasting, as well as other parts of the economy, and that that money can make a major impact on the scale of our efforts.

We are working with all other national public broadcasting entities in trying to develop a job bank that is, again, effective and efficient.

Our staff in this area has increased from 2 to 10 in the last couple of years. We have formed the Human Resources Development Department. Before, we had one special assistant to me. The main function of this department is to help the stations by individual counseling and assistance, among other things, but only at the station's request.

One thing that we have done, for example, is to hold one, and we are going to hold more, EEO workshops to explain the law and effective methods of improving EEO performance at the stations.

Another example of CPB initiatives is a series of seminars for program directors of television stations. One of the subjects discussed at these seminars has been minority programs—how to do them, how to evaluate them, how to find them.

Now there are other misconceptions. One mis-conception is that public television is worse than commercial television as far as EEO mat-

ters are concerned. That is not true according to FCC data and that is the only comparable data because we, of course, do not get commercial data.

We are slightly better and certainly no worse than commercial broadcasting.

Mr. VAN DEERLIN. I think that would be untrue in my home community but that would not belie your general statement.

Mr. LOOMIS. I am sure it is undoubtedly true in certain specific areas. The data that we have here is 1975, if I remember right. Yes. This was done in 1975 which means that the data was gathered in January and March of 1975, so it is almost 18 months old.

Mr. VAN DEERLIN. A little better than a year old.

Mr. LOOMIS. Yes, 18 months ago. It shows that with minorities commercial had 13.8 percent and noncommercial 11.6 percent. That was in television.

In radio, commercial was 10.2 and noncommercial was 12.1.

Mr. VAN DEERLIN. I was never particularly good at fractions and ratios but I see that the most current figures on San Diego State University show that there are 5 out of 41 total full-time employees and no minorities among 13 part time and in a school which has pushed Chicano opportunities very hard only 3 Spanish surname employees out of those 41 full-time employees and none among the minorities.

In commercial broadcasting meanwhile in San Diego there has been a tremendous push toward developing training opportunities and, therefore, hiring, putting the horse properly before the cart, and the record is infinitely better in commercial broadcasting. I didn't mean to intrude on your testimony.

Mr. LOOMIS. I think you may well be right, as I said, sir. We do not know about the commercial broadcasting. The figures that we obtained last week, checking a few stations, those of the committee members——

Mr. VAN DEERLIN. I don't mean to suggest that the commercials did it out of the goodness of their hearts, they were hard bargaining with the Chicano Federation on a petition to deny license.

Mr. LOOMIS. Right.

We show that last week KPBS had 9.8 percent minorities on its staff and 36.6 percent female. As I said, I don't have the official comparisons but these figures are lower than that of many other public broadcasting entities.

Another misconception is that the stations or licensees are only subject to EEO laws if CPB enforces them. This is not the case. Virtually all of them are subject to title VII, enforced by EEOC (or the Justice Department if they happen to be a State entity or the State is the licensee). Most of them are covered by titles VI and IX because they have received HEW grants either as educational institutions or under the facilities program. So that virtually all of these licensees are covered by the appropriate Government departments.

Of course, all of them are covered by the FCC because they all get licenses from the Commission. Many of them are covered by the appropriate State and local government departments as well because they all have essentially the same laws, though they may differ from State to State and locality to locality.

So we believe that CPB would be just another layer on top of all of this. Therefore, CPB would not add a significant bit to the pot and whatever it did would be at a tremendous cost because of the damaging effect on the delicate structure that was made by the Congress in 1967.

The Corporation is a unique animal—it is a nonprofit company, it does receive most of its funds from the Federal Government, its Board of Directors are nominated by the President and confirmed by the Senate. So it is a strange hybrid which, of course, Congress knew and constructed and designed.

It is a very delicate instrument and we feel that great care must be taken not to damage it so seriously for any good cause such that it cannot perform the functions for which it was created.

CPB believes that the language in the present bill is vague and confusing. We feel that it falls short of assuring the public or the Congress or CPB that moneys will be spent consistent with the EEO goals.

But more explicit language would irrevocably damage CPB's private status. We feel that the assurance of compliance can only be attained if the appropriate Federal agencies more effectively carry out their enforcement roles.

Thank you, sir.

[Testimony resumes on p. 65.]

[Mr. Loomis' prepared statement and attachments follow:]

STATEMENT OF

HENRY LOOMIS, PRESIDENT
CORPORATION FOR PUBLIC BROADCASTING

The purpose of this statement is to examine the applicability to the Corporation for Public Broadcasting (CPB) of Titles VI and VII of the Civil Rights Act of 1964 (42 U.S.C. §2000d, 2000e) and Title IX of the Educational Amendments of 1972 (20 U.S.C. §1681), and to discuss the applicability of those titles to those public broadcasting entities which receive assistance from the Corporation.

There are two critical areas of confusion which have arisen regarding CPB's responsibilities under the above title. Numerous questions have arisen as to the applicability of these titles both to CPB itself, and to the recipients of the Corporation's funds. Out of this confusion has arisen the misconception that recipients of CPB assistance escape the duties and responsibilities imposed by the civil rights statutes solely because the Corporation does not possess the authority to enforce those laws.

As for the first issue, it is clear that CPB has a legal duty to comply with the employment discrimination prohibitions of Title VII of the Civil Rights Act, as well as the Age Discrimination in Employment Act of 1967 (29 U.S.C. §621) and that the Corporation has a contractual duty to adopt and implement an affirmative action plan in accordance with Executive Order 11246, as revised. In addition, as a government contractor, CPB is also bound by Title VI of the Civil Rights Act, and to the extent that CPB engages in educational activities within the meaning of Title IX of the Educational Amendments of 1972, is governed by that title as well.

However, CPB, as a private, non-government corporation, is not vested with the authority to act as an agency of government in undertaking the duties to ensure that its grantees and contractors adhere to and comply with those laws and regulations. Furthermore, to require the Corporation to do so would be wholly inconsistent with the design and plan of the Public Broadcasting Act (47 U.S.C. §396), raise serious constitutional questions, and threaten the very premise and foundation of CPB.

CPB has, however, adopted policies which are designed to require and encourage each of its recipients of assistance to comply with all Federal, state and local laws and regulations which prohibit discrimination. Additionally, the Corporation has actively encouraged the Federal Communications Commission, which licenses all noncommercial educational television and radio broadcasters to require each broadcaster to adopt and implement affirmative action plans, and engage in the process of ascertaining the needs and interests of the communities they serve. Furthermore, the Corporation's Department of Human Resources Development has undertaken a variety of activities designed to encourage and assist noncommercial broadcasters in their equal opportunity compliance efforts.

The Corporation has a keen interest in seeing that the equal opportunity laws are enforced throughout the public broadcasting industry, and shares the concern of the Congress and the public

that public broadcasting is not highly ranked on the list of enforcement priorities of those government entities which have been given the Congressional authority to enforce those laws. Accordingly, CPB appreciates the opportunity provided by this Committee to explore these issues. Further, it is our hope that this Committee and the Congress will find ways and means of clarifying and strengthening the enforcement policies of the responsible government agencies.

CPB is also aware of and sensitive to those issues surrounding the First Amendment rights of broadcasters, and the potential interference with those rights which could arise from the improper enforcement of certain Civil Rights laws. Congressional efforts in constructing the Public Broadcasting Act were to ensure both that the policies of the Corporation itself are absolutely free of governmental or any other type of influence or control, and that the stations assisted by the Corporation are equally independent. Thus, any enforcement effort which has the potential of regulating the content of programs produced and disseminated by public broadcasting stations must be tempered by First Amendment considerations.

The Appropriations Committee has recently reported out of Conference the Labor/HEW Appropriations Bill (H.R. 14232), which generously provides for the increased Federal support of public broadcasting. As a limitation on the expenditure of those appropriated funds, the Congress has required that the monies be spent in accordance with equal opportunity

objectives. The language of that Bill, however, falls short of ensuring the public, the Congress, and CPB that the monies will be spent by the station recipients consistent with the goals of the civil rights laws and policies. This assurance can only be attained if the appropriate Federal agencies more effectively carry out their respective enforcement roles.

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CPB Policies And Activities Are Consistent With Those Federal Laws and Policies Promoting Equal Opportunity

CPB requires each recipient of a grant or contract to agree that it: (1) will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, or national origin; (2) will take affirmative action to ensure that applicants are considered for employment, without regard to their race, color, religion, age, sex, or national origin; and (3) to include these provisions in all subcontracts entered into in connection with carrying out the project. Thus, all CPB grants and contracts incorporate the prohibitions of Title VII and the Age Discrimination in Employment Act of 1967. (See, Attachment I)

In addition to this broad nondiscrimination and affirmative action requirement, all CPB grants and contracts include a provision incorporating the CPB policy entitled "Equal Opportunity and CPB Assistance." (See, Attachment II) This policy was adopted by the CPB Board of Directors in 1974. The recipient accepts the policy and its implementation in exchange for CPB support.

The policy provides for termination of CPB assistance to any grantee which a court or competent government agency has determined to have violated a Federal, state or local law or regulation prohibiting discrimination on the basis of race, color, religion, age, national origin or sex. The intent in adopting such a policy was to provide an incentive for complying with all anti-discrimination laws and regulations.

The policy is applicable to recipients of CPB assistance in any form: in-kind services as well as direct financial assistance. It is unrestricted in scope: discrimination in any grantee activity may be the subject of the judicial or regulatory determination that triggers application of the policy. It incorporates all laws and regulations applicable to the grantee, local and state anti-discrimination statutes, as well as Titles VI, VII and IX. Most importantly, from CPB's perspective, the policy is contractual and not regulatory, and comes into play upon the judicial determination of a government entity, enforcing government policy, with government authority.

The first time the Corporation invoked this policy concerned the matter of the license renewal denial of the Alabama Educational Television Commission (AETC). In January, 1975 the Federal Communications Commission denied renewal of AETC's nine noncommercial television licenses pursuant to its finding that the AETC program policies and practices discriminated against Alabama's black minority population during the license period 1967-1970.

On February 24, 1975, in accordance with and pursuant to its equal opportunity policy, CPB gave notice to AETC that its eligibility for CPB assistance was in question. AETC duly responded, citing the FCC findings, which demonstrated a host of post-license term improvements in the AETC programming policy. AETC further cited the FCC's decision to waive its own rule to permit AETC to reapply for the licenses in question. Moreover, the Alabama Civil Liberties Union, one of those who had successfully challenged AETC's eligibility for license renewal, urged CPB to refrain from invoking its policy, because the Commission had not finally decided who would be granted the licenses in issue.

Additionally, the Alabama Civil Liberties Union argued that any CPB determination regarding the correction of deficiencies noted by the FCC would unduly prejudice the rights of the parties involved.

On March 12, 1976, the CPB Board of Directors decided to withhold its decision to terminate the AETC assistance on the grounds that the "...implementation of its policy must not work to undermine the interests of the very persons the policy was designed to protect." The Board, however, reserved its right to review its decision from time to time to ensure that its assistance to AETC was used "on a constructive equal opportunity basis that meets the vital needs of all of the citizens of Alabama." To CPB's knowledge there have been no other final determinations of discrimination by courts or agencies, which would trigger application of the CPB policy.

The CPB equal opportunity policy further obligates the Corporation to refer all complaints alleging discrimination to the appropriate government agencies with jurisdiction. It also requires the Corporation to cooperate fully with the appropriate agency throughout the investigatory period.

On January 14, 1976, CPB received a letter from Pluria Marshall, Chairman of the National Black Media Coalition, alleging possible violations of Title VII of the Civil Rights Act of 1964 by National Public Radio (NPR). CPB forwarded the complaint to Treadwell Phillips, Director of the Washington District Office of the EEOC, pledging full cooperation with that agency in its investigation.

The Corporation's interest in seeking effective equal employment opportunity enforcement was reflected in its recent response to the FCC Notice of Inquiry and Notice of Proposed Rule-making concerning the employment practices of broadcasting licensees (Dkt. 20550). The CPB Comments (filed October 10, 1975, (See, Attachment III) urged the Commission to make its EEO guidelines most effective, by requiring each broadcast licensee, regardless of size, to adopt affirmative action plans similar to those required of Federal contractors, pursuant to the Office of Federal Contract Compliance's Revised Order No. 4. (41 C.F.R. §60-2.1 (1974)). Such a plan would require each licensee to analyze its workforce, compare it with the availability of women and minorities in the labor pool, identify

the causes of underutilization of women and minorities, and finally, adopt hiring goals and timetables. CPB felt that this approach was certain to assure better FCC monitoring and enforcement of equal employment opportunity, and would further ensure full integration of women and minorities into the public broadcasting industry. As shown below (p. 14), the Commission failed to adopt many of the Corporation's suggestions in this proceeding.

CPB firmly adheres to the belief that radio and television broadcast programming must be "...responsive to the interests of people... in particular localities and throughout the United States, and [must] constitute an expression of diversity..." (47 U.S.C. §396(a)(4)) and, in accordance with this policy, CPB further believes that all members of the public must be provided access to noncommercial broadcasting's activities and programs. Related to this belief are the Corporation's efforts in urging the FCC to initiate a proceeding which would result in requiring noncommercial broadcasters to ascertain the needs of the communities they serve. The Commission, adopting many of the Corporation's suggestions, recently issued its Report and Order (Dkt. 19816) obligating public broadcasters to engage in an effective yet flexible ascertainment process.

To assist its recipient stations in their ascertainment efforts, CPB has prepared An Ascertainment Handbook, which contains suggested methods of complying with the FCC requirements and obtaining the best ascertainment results possible.

Additionally, on a matching basis with the stations, CPB has funded eight (8) different ascertainment studies or models to suit each type of noncommercial broadcast licensee's ascertainment needs.

The Corporation is also in the process of preparing a pamphlet entitled "How to Start a Public Broadcasting Station," designed to assist interested persons, particularly women and minorities, in their efforts to acquire access to available frequencies.

As further evidence of CPB's perception of the need for increased responsiveness to the goal of equal opportunity, it has recently established a Department of Human Resources Development. The primary activities of the Department concern equal employment opportunity, fair treatment of women and minorities in programming, and liaison between the Corporation and special interest groups, elements of the noncommercial broadcasting industry, and the general public. Department staff will assist licensees with the development and implementation of affirmative action plans, job information exchange, and the collection and use of statistical information. A copy of its 1976 Annual Report to the CPB Board of Directors is appended to this document as Attachment IV.[1] It provides an analysis of all activities of the Corporation during FY 1976, related to women and minorities.

One of the most significant accomplishments in this area is the CPB Training Program. Approximately three years ago, CPB initiated its Minority Training Grant program, in which the Corporation provides stations with up to 50 percent of the salary of a minority employee for a two-year period. Since

[1] May be found in subcommittee's files.

the beginning of the program, 112 grants have been awarded. The total amount of funds either expended or committed for the program has been in excess of $2 million - $1 million from CPB and $1 million from the stations. At the funding levels contained in the recent House/Senate Appropriations Conference Report (H.R. 14232), CPB budget allowances for this program would triple.

Recently, CPB implemented its Women's Training Grant program, designed to encourage the employment of women in positions where they are currently underutilized. To date, a total of fourteen grants have been awarded, with expenditures or committed funds in excess of $200,000.

In addition to these training programs, the Corporation continues to provide scholarships for minority students at the University of Missouri School of Journalism, and in-service training programs for its own employees.

Public broadcasting has also established an industrywide Committee on Personnel Training and Development. Its membership consists of representatives from CPB, National Public Radio, the Public Broadcasting Service, and the National Association of Educational Broadcasters. The Committee's efforts are principally directed toward moving more women and minorities into the industry and providing upward mobility for those already within the industry. One of the methods of accomplishing

these goals will be through the projected establishment of a job bank, which will provide information on job availability, candidates, and career patterns.

As a measure of its commitment to improve the status of women and minorities in the Corporation, CPB has met each of its hiring goals established by its Affirmative Action Plan, adopted on July 7, 1975. For example, the representation of women at the management level increased from 0 percent in December, 1974 to the current 20 percent. Minority representation at the management level witnessed a similar increase from 6 percent in December, 1974 to the current 20 percent, far exceeding parity with with the adjusted national labor force. CPB is in the process of revising its current Affirmative Action Plan and establishing new goals and timetables. The revision is expected to be completed by Fall, 1976.

Whether reflected in the terms and conditions of its grants and contracts, its formal statements before Federal agencies, or in its activities, it is clear that the Corporation's commitments and activities are wholly consistent with the policy of promoting equal opportunity.

CPB Must Look to the Federal Regulatory Agencies For Enforcement of the Laws Throughout the Industry

The Public Broadcasting Act of 1967 declares that "a private corporation should be created to facilitate the development of

educational...broadcasting and to afford maximum protection to such broadcasting from extraneous interference and control." (47 U.S.C. §396(a)(6)). Congress required that CPB be incorporated under the laws of the District of Columbia and specifically directed that it would "not be an agency or establishment of the United States government." (47 U.S.C. §396(b)). The United States Court of Appeals for the District of Columbia, in an opinion by Judge Bazelon, has recognized that the private, non-governmental status of CPB is an essential aspect of the Congressional scheme for providing financial assistance for public broadcasting. Accuracy in Media v. FCC 521 F. 2d. 288(D. C. Cir. 1975), cert. den. 96 S.Ct. 1664 (1975). Thus, the Court recognized the validity of the Congressional determination to require that CPB be a "private corporation...[in order] to afford maximum protection of...[noncommerical] broadcasting from extraneous interference and control." (47 U.S.C. §396(a)(6))

Congress directed the Corporation to "carry out its purposes and functions in ways that will most effectively assure the maximum freedom of the noncommercial...stations from interference with or control of program content or other activities." (47 U.S.C. §396(g)(1)(D)) Thus, Congress did not intend that the Public Broadcasting Act would reduce the freedom and independence of the noncommercial stations.

The legislative history of the Public Broadcasting Act is replete with references to the importance of ensuring that the

Corporation not interfere with the responsibilities of the local stations. For example, the House Report emphasizes:

> ...a fundamental concept which runs throughout Title II--localism: local stations shall retain both the opportunity and responsibility for broadcasting programs they feel best serve their communities. Similarly, the local station alone will make the decision whether or not to participate in any interconnection arrangements, be it State, regional, or national. H.R. Rep. No. 572 at 18. S. Rep. No. 222, at 7-8.

Thus, it would be wholly inappropriate for the Corporation, a private entity, to assume an enforcement role with respect to the Civil Rights laws. It has neither the authority nor the resources to do so. This would surely destroy the delicate balance achieved by the Congress in constructing the Public Broadcasting Act.

However, in order to assure that the funds it disburses are not being used to thwart the purposes and objectives of those laws, regulations, and policies prohibiting discrimination, the Corporation has pledged that it will terminate all assistance if a recipient is found by a court or government agency to have violated such laws. But, because of the apparent lack of interest by those agencies in the activities and employment practices of public broadcasters, the Corporation's policy of termination lacks significant force and effect. Public broadcasting stations are not, therefore, threatened by the possibility that a major funding arm will be severed.

Because CPB cannot undertake Civil Rights enforcement activities, there are those who assume or allege that noncommercial broad-

casting licensees enjoy an exemption from the enforcement of major equal opportunity laws and regulations. (See, e.g. 121 Cong. Rec. H10680 (daily ed. Nov. 10, 1975) A close examination of the public broadcasting industry, along with a careful analysis of the coverage of those laws and regulations, clearly demonstrate that such an assumption is erroneous. Nevertheless, some of those agencies with jurisdiction have established policies, which have, in effect, omitted public broadcasters from the reach of these laws and regulations.

The Federal Communications Commission, which licenses each noncommercial broadcast licensee has adopted comprehensive equal employment opportunity regulations, and requires the submission of annual employment and salary reports from each such licensee. The Commission's authority to promulgate such regulations was recently sanctioned by the U. S. Supreme Court. See, NAACP v. Federal Power Commission, 44 U.S.L.W. 4659 (May 19, 1976). On June 22, 1976, the Commission issued its Report and Order In the Matter of: Nondiscrimination in the employment policies and practices of broadcast licensees (Dkt. No. 20550). The Report and Order seeks to reaffirm the Commission's commitment to the goal of EEO by its licensees, and to effectively strengthen its enforcement mechanisms. However, the Commission, despite the Corporation's comments (See Attachment III) decided to exempt broadcasters with ten or fewer employees from filing written affirmative action plans. This exemption for public broadcasters means that approximately 43 percent of such stations will be excluded.

Furthermore, the Commission has exempted licensees with less than 50 employees from providing a workforce survey. Clearly 70 percent of noncommercial television and 100 percent of noncommercial radio will be exempted. Thus, we can be assured that equal employment opportunity performance of noncommercial broadcasters will substantially remain unchecked by the FCC.

Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d) prohibits discrimination on the basis of race, color or national origin by recipients of Federal financial assistance, and requires each Federal department or agency, which disburses such assistance, to ensure compliance on the part of its recipients. A substantial majority of public broadcasters are subject to the enforcement of Title VI. For example, we know that 83 percent of the CPB qualified radio stations are licensed to institutions of higher education, local public school systems or state or municipal authorities. Seventy-four percent (74%) of the CPB-qualified television stations have the same affiliations. States and municipalities, colleges and universities, and school systems are all major recipients of Federal assistance, and the broadcasting stations licensed to them are among the primary beneficiaries. The equal opportunity obligations of the named licensees are also those of the stations. Furthermore, of the CPB-qualified independent or "community" broadcasters, 29 percent of the radio stations received Federal financial assistance during FY '75, and 52 percent of the

television licensees were also such recipients. Thus, each of these entities are subject to a federal agency's (primarily HEW) ascertainment of their Title VI compliance.

Title IX of the Education Amendments of 1972 (20 U.S.C. §1681) prohibits discrimination on the basis of sex in all education programs receiving Federal financial assistance. Title IX contemplates the same enforcement scheme as Title VI, i. e. those agencies disbursing such assistance must ascertain its recipients' compliance. Approximately 52 percent of the CPB-qualified television and radio stations are licensed to educational institutions, as that term is defined in 20 U.S.C. §1681(c). Clearly then, HEW, the major, if not sole funding source for educational institutions has the authority to effectuate the provisions of Title IX with respect to these stations.

Title VII of the Civil Rights Act of 1964 (42 U.S.C. §2000e) prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin, and applies to all employers with 15 or more employees. Approximately 84 percent of the television stations and 12 percent of radio stations receiving CPB assistance are "employers" as that term is defined in 42 U.S.C. §2000e(b).

Thus, a significant number of public broadcasters are required to comply with all of the major laws and regulations prohibiting discrimination. However, CPB and the public, must look to the FCC, HEW and other funding Federal agencies, and the

EEOC to ensure such compliance. Without some effort and interest on the part of those entities, the CPB policy on termination of funding will never have the intended effect as foreseen by the CPB Board of Directors.

The Threat of Infringement of First Amendment Rights

Enforcement of certain major civil rights laws, which entails the monitoring of the programming activities of producers and local stations, raises sensitive First Amendment problems. The First Amendment, of course, is intended to prevent the Government from interfering with the free expression of those engaged in the dissemination of ideas. See, e.g., Columbia Broadcasting System, Inc. v. Democratic National Committee, 412 U.S. 94 (1973).

Title VI of the Civil Rights Act of 1964, requires that persons shall not "...be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." (42 U.S.C. §2000d). (Emphasis added) Title IX of the Education Amendments of 1972 contains the same prohibitions, but by its terms limits its coverage to "education program[s] or activity[ies] receiving Federal financial assistance." (20 U.S.C. §1681). (Emphasis added)

"Program[s]" within the meaning of Titles VI and IX must not be interpreted to be synonymous with the definition

of "program" as used by broadcasters. Such an interpretation would render the content of programs disseminated to the public subject to the scrutiny of the government, resulting in a "chilling effect" on expression, which the First Amendment prohibits. NAACP v. Button, 371 U.S. 415 (1963).

The Federal Communications Commission has had the occasion to examine the issue of discrimination in the programming policies of a noncommercial broadcast licensee. The FCC, in denying the license renewal applications of the Alabama Educational Television Commission, found that the AETC had "...followed a racially discriminatory policy in its overall programming practices and, by reason of its pervasive neglect of a black minority consisting of approximately 30 percent of the population in Alabama, its programming did not adequately meet the needs of the public it was licensed to serve." (In re Applications of Alabama Educational Television Commission FCC - 74 - 1385 (Dkt. No. 19422 - 19430)). The Commission found that the AETC programming policies and practices, operated to systematically exclude the 30 percent black minority. Findings of the Commission included:

> that blacks rarely appeared on AETC programs; that no black instructors were employed in connection with locally-produced in-school programs; and that unexplained decisions or inconsistently applied policies forced the preemption of almost all black-oriented network programming. In addition to the paucity of integrated programming, the record indicates that there was virtually no black input into the programming process and no attempt during the license term by AETC to solicit black input through any

> of its decision making bodies. These factors, together with direct actions undertaken by AETC's management in rejecting almost all black-oriented NET programming, bear witness to and illustrate the policies that tainted the licensee's overall performance during the license period. (at para. 16).

The crucial aspect of the Commission's decision is that it did not attempt to suggest the type of programs which the licensee must disseminate, thereby running the substantial risk of infringing the First Amendment rights of the AETC. The Commission only found that the license renewals applications should be denied for AETC's failure to program to serve the public interest, and the interest of all of Alabama's citizens, black and white.

The actual content of programs, while relevant, was not the sole determinative factor contributing to the Commission's ultimate findings.

The Limitations on the Expenditure of Funds Appropriated to the Corporation Pursuant to HR 14232 Is An Inadequate Approach to Ensuring Equal Opportunity Compliance

Recently, the House/Senate Conference Committee reported out HR 14232 making appropriations to the Corporation for Public Broadcasting for FY 77, 78, and 79. The language of that Bill, as reported out, states:

> "None of the funds contained in this paragraph shall be available or used to aid or support any program or activity excluding from participation in, denying the benefits of, or discriminating against, any person in the United States on account of race, color, national origin, religion or sex..."

This language is troublesome because of its ambiguity and vagueness. The words "shall be available" can be interpreted in several ways. For example: it could be construed to mean that funds appropriated to the Corporation could be withheld from the Corporation by the Secretary of the Treasury on advice of the Department of Justice that either CPB or one of its recipients was excluding participation, denying benefits, or otherwise discriminating. Furthermore, this language could also be interpreted to mean that CPB could not make funds available to aid or support activities in which the prohibited exclusion, denial, or discrimination exists.

Moreover, CPB is presented with the issue of who should make the determination that such prohibited activities exist?

Does the language assume compliance and enforcement functions for the Corporation? As stated elsewhere in this memorandum, such functions would bestow governmental duties upon CPB, which as a private corporation it has neither the authority nor resources to perform. It would be inconsistent with the basic nature and purpose of CPB, which is to serve as the entity which would allow the Federal government to compliment and support public broadcasting, while at the same time, affording maximum protection to such broadcasting from extraneous interference and control. As we have demonstrated above, such enforcement activity must be left in the hands of those governmental entities to which Congress has provided the jurisdiction and authority.

The Senate Report accompanying HR 14232 provides that:

> "The Committee strongly suggests that the Corporation consider ways to improve the enforcement of compliance with the aforementioned civil rights statutes by the recipients of Corporation funds. In this regard, the Corporation should consider the referral or delegation of enforcement of these laws and regulations to the appropriate governmental agency, or agencies. The Corporation should begin immediately to improve its own internal monitoring procedures and consider the development of a precertification process for public broadcasting entities to assure that recipients of Corporation funds are in compliance. However, none of these suggested approaches is to be considered mutually exclusive.
>
> "The Committee will expect a quarterly report on the Corporation's efforts and accomplishments in this area, to commence 90 days after enactment of this bill."

The Senate Committee on Appropriations has suggested that the Corporation consider referring or delegating enforcement authority to government agencies. As a private corporation, CPB cannot "delegate" authority to enforce the law, for such authority is not vested in it. Moreover, since agencies of the Federal government are already provided with authority to enforce the relevant Federal statutes, it seems wholly inappropriate for CPB to "refer" the implementation of those duties to such agencies. Finally, the suggestion that CPB should seek certification from its recipients that they comply with the relevant laws and regulations prohibiting discrimination is superfluous. Such certifications of compliance have always been made conditions for the receipt of assistance from CPB. (See p. 4, supra).

The Corporation respectfully urges this Committee to examine the language of HR 14232 which affects the Corpora-

tion, in light of its findings resulting from these hearings. CPB is willing and eager to work with this Committee in the construction of an effective scheme for assuring the public and the Congress, that the funds disbursed by the Corporation are not used to assist others to undermine the policies and purposes of the Civil Rights laws.

ATTACHMENT I

The following provision is incorporated into all grants and contracts through which CPB assistance is given:

Nondiscrimination

During the performance of this Agreement, Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, or national origin. Contractor will take affirmative action to ensure that applicants are considered for employment, and that employees are treated during employment, without regard to their race, color, religion, age, sex, or national origin. Contractor will include the provisions of this paragraph in all subcontracts entered into in connection with carrying out this Agreement.

ATTACHMENT II

Equal Opportunity and CPB Assistance

I. Policy

It is the policy of the Corporation for Public Broadcasting: (1) to fully comply with all applicable laws and regulations, including laws and regulations prohibiting discrimination against any person on the basis of race, color, religion, national origin, age, or sex, and (2) to require that each recipient of assistance from the Corporation whether in cash or in kind, comply with all such laws and regulations.

II. CPB Role and Cooperation with Government Agencies

The Corporation for Public Broadcasting is a private, non-profit Corporation. Because CPB is neither a government agency nor a law enforcement body, it does not have the legal authority to investigate and adjudicate complaints based upon allegedly discriminatory practices by recipients of its assistance that such agencies and bodies do. CPB will, however, promptly refer all such complaints received by it to a government agency with jurisdiction for any proceedings that may be appropriate. Further, the Corporation will cooperate fully with every agency with jurisdiction to inquire into allegedly discriminatory practices of recipients of CPB assistance.

III. Laws and Regulations Applicable

Applicable laws and regulations prohibiting discrimination against persons on the basis of race, color, religion, national origin,

age, or sex may be federal, state or local, and may vary from recipient to recipient and from jurisdiction to jurisdiction. Each applicant or recipient of CPB assistance shall inform itself of the laws and regulations applicable to it, and the Corporation shall not undertake to so inform the applicant or recipient, unless a law or regulation requires that the Corporation do so, and then the Corporation shall undertake to inform the applicant or recipient only to the extent the law requires.

IV. Suspension or Cancellation of CPB Assistance

Whenever a court or government agency with jurisdiction shall determine finally that a recipient of assistance from the Corporation is in violation of federal, state or local laws and regulations prohibiting discrimination on the basis of race, color, religion, age, national origin or sex, and notice of such determination is given in writing to the Corporation by the court, agency, or any other person and officially certified, the Corporation shall promptly notify the recipient that unless the recipient shall demonstrate to the satisfaction of the Corporation within 30 days that the violation has been fully corrected or that the recipient is in full compliance with all remedial provisions of such final determination, the Corporation shall suspend or cancel all assistance to the recipient.

Whenever such final determination is appealed or otherwise challenged in an appropriate forum, whether or not the effect of such

determination is stayed pending appeal, the Corporation shall notify the recipient that, unless the recipient can show cause to the contrary within 30 days, the Corporation shall suspend or cancel CPB assistance. If the Corporation decides to suspend such assistance, then all sums that would otherwise have been payable to the recipient shall be held by the Corporation pending completion of the appellate process, but the provision of in kind assistance shall not be suspended or cancelled pending the appeal.

V. Applicants Ineligible to Receive CPB Assistance

An applicant for assistance from the Corporation whom a court or government agency with jurisdiction has determined finally to be in violation of any federal, state, or local law or regulation prohibiting discrimination on the basis of race, color, religion, national origin, age, or sex shall be ineligible for assistance from the Corporation, unless the applicant shall demonstrate to the satisfaction of the Corporation that the violation has been fully corrected or that it is in full compliance with all remedial provisions of such final determination.

VI. Effective Date

The provisions of this policy statement shall become effective with respect to assistance granted or applications for assistance filed or pending on or after March 1, 1974.

ATTACHMENT III

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:

Nondiscrimination in the employment policies and practices of broadcast licensees	Docket No.20550

Comments of the Corporation for Public Broadcasting

A. Introduction

1. The Corporation for Public Broadcasting (CPB) is a private nonprofit corporation authorized to be established to implement the objectives of the Public Broadcasting Act of 1967 (47 U.S.C. 396 et.seq.). With funds received from public and private sources, CPB renders financial assistance to noncommercial educational broadcast licensees as an aid in enhancing each licensee's ability to serve the local public interest with communications services and as a way of fostering the full development of noncommercial broadcasting.

2. As a significant part of its public interest mandate, CPB requires each recipient of its financial assistance to comply with all applicable federal or state laws and regulations which prohibit discrimination against any person on the basis of race, color, religion, national origin, age, or sex. Because CPB is a private, nongovernment entity, it does not monitor, investigate nor enforce compliance with such laws and regulations by its recipients. CPB therefore looks to federal and state agencies and courts to investigate, enforce and make final determinations regarding licensee and station compliance, and CPB then decides, based upon such final determinations,

whether its financial assistance should continue.

3. Given CPB's commitment to foster the goal of equal opportunity in employment at noncommercial stations, and its dependence upon governmental agencies such as the Commission to regulate achievement of that goal, CPB is encouraged by the Commission's response to the United States Commission on Civil Rights' evaluation of the Commission's equal employment opportunity regulations; 1/ and endorses the Commission's goal of making those regulations effective in promoting the full realization of equal employment opportunity in broadcasting for all qualified individuals.

4. CPB recognizes that the Commission's primary purpose in promulgating the proposed rules is to clarify its existing regulations so that they are more specific and result-oriented, 2/ and further recognizes the Commission desires that the clarification will significantly contribute to more effective enforcement. 3/ However, CPB submits that the proposed rules: 1) do not provide adequate guidance to stations for developing effective affirmative action plans; 2) are too general in nature; and 3) lack the desired specificity. Accordingly, they fall far short of constructing an effective method to achieve full utilization of minorities and women in broadcasting.

1/ The Federal Civil Rights Enforcement Effort - 1974: Vol. I To Regulate in the Public Interest (November, 1974) [hereinafter cited as To Regulate in the Public Interest]

2/ Federal Communications Commission, Notice of Inquiry and Notice of Proposed Rulemaking in the Matter of: Nondiscrimination in the Employment Policies and Practices of Broadcast Licensees, (July, 1975), §15 [hereinafter cited as 40 FR 1430]

3/ Id. §2

5. CPB recommends that the Commission require less licensee endorsement of general statements of commitment to the policy of equal employment opportunity, and more reporting of easily assessible quantitative material, which would graphically reveal the results of such commitments. This will undoubtedly lessen the amount of time necessary for Commission staff review.

B. Requirements of Affirmative Action

6. The Commission's first policy statement on equal employment opportunity asserted that since broadcasting is:

> "...a mass media service to the public which is based entirely on a Federal license under a public interest standard...the situation clearly parallels the Federal policy in contract awards." 4/

Since the Commission itself has drawn a parallel between the grant of a broadcast license and federal contracting, CPB believes that the Commission should adopt a policy which would closely adhere to that Federal policy applicable to such contractors. This Federal policy which requires the development of an affirmative action plan, is embodied in Revised Order No. 4, 5/ issued by the Office of Federal Contract Compliance of the Department of Labor. Its implementation is generally regarded as being the most effective method of eliminating all forms of descrimination in employment practices and policies. The language employed by the Commission in describing affirmative

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4/ 13 F.C.C. 2d 766, 769 (1968)

5/ 41 C.F.R. §60-2.1 (1974)

action is similar to that language set forth in Revised Order No. 4. 6/ The FCC proposal states:

> ...an affirmative action plan is a set of specific and result oriented procedures which broadcasters must follow to assure that minorities and women are given equal and full consideration for job opportunities. 7/

7. Thus, in order to assure that minorities and women are fully utilized in broadcasting, the FCC should devise a policy which retains the basic requirements of an affirmative action plan as contemplated by Revised Order No. 4, i.e. utilization analysis, identification of the causes of underutilization, and goals and timetables. CPB recommends, however, that the Commission should specifically tailor these requirements to suit the needs and equal opportunity goals of the broadcasting industry.

8. Pursuant to the Revised Order contractors are required to analyze areas in which there is underutilization of minorities and women (a utilization analysis), and are required to adopt goals and timetables, which are designed to correct the problems of the underutilization which the contractor finds.

9. The purpose of the utilization analysis is to assess the degree to which minorities and women are utilized in the employer's workforce as compared to their availability in the local workforce or in the area from which the employer may reasonably recruit. If as a result of this analysis, and a study of all employment procedures

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6/ "An affirmative action program is a set of specific and result-oriented procedures to which a contractor commits himself to apply every good faith effort. The objective of these procedures plus such efforts is equal employment opportunity." (41 C.F.R. 60-2.10)

7/ 40 Fed.Reg. 145, 515 (1975)

and techniques, the employer finds that there is underutilization, and cites the reasons therefor, the employer must then develop a set of goals and timetables, which set forth the employer's expectations of hiring goals, and the time by which such underutilization can be corrected.

1. Utilization Analysis

10. Paragraph 20 of the Commission's proposed rules would require broadcasters to:

> "Conduct [a] continuing review of job structure and employment practices and adopt positive recruitment, training, job design, and other measures needed in order to ensure genuine equality of opportunity...[T]he broadcaster must determine whether qualified minorities and women are employed on its workforce in some reasonable relationship to the numbers in the local labor market." 8/

CPB finds that these guidelines fall short of providing adequate instructions to broadcasters on the preparation of a workforce survey. A workforce survey should list all job titles, as provided by FCC Form 395, and should show the numbers of employees who are male, female, Black, Spanish-surnamed American, American Indian and Oriental. To discover underutlization in the workforce, the employer must look to each work unit and department. CPB anticipates that broadcasters will be unable to adequately determine underutilization in such work units, departments or lines of progression within those units or departments, without attempting to rank order job titles from the lowest salary in each job category to the highest. Clearly, salaries are indicative of the value attached to the abilities of the employee.

8/ Id. §20

Furthermore, such reporting may also reveal unreasonable discrepancies between salaries paid to persons with the same degree of responsibility.

11. In designing a scheme by which licensees may develop a workforce analysis, the Commission may, as a starting point, want to utilize the plan as embodied in Revised Order No. 4, which provides:

> "[The] [w]orkforce analysis...is defined as a listing of each job classification as appears in applicable collective bargaining agreements or payroll records (not job groups) ranked from lowest paid to the highest paid within each department or other similar organizational unit including departmental or unit supervision. If there are separate work units or lines of progression within a department a separate list must be provided for each such work unit, or line, including unit supervisors. For lines of progression there must be indicated the order of jobs in the line through which an employee could move to the top of the line. For each job classification, the total number of male and female incumbents, and the total number of male and female incumbents in each of the following groups must be given: Blacks, Spanish-surnamed Americans, American Indians and Orientals. The wage rate or salary range for each job classification should be given. All job classifications including all managerial job classifications must be listed." 9/

Since the Commission has stated a goal of insuring "...equality of opportunity...in all organizational units, occupations and levels of responsibility at the station," 10/ then it must require an analysis of each unit and level, as specified above, so that every area of underutilization may become more apparent to the broadcaster and to the Commission's review staff.

12. The Commission has proposed that broadcasters be required to:

9/ 41 C.F.R. §60-2.11(a) (1974)

10/ 47 C.F.R. §§73.125(b)(5) (1974)

> "...determine whether qualified minorities and women are employed on its workforce in some reasonable relationship to the numbers in the local labor market." 11/ [Emphasis added]

Here, the Commission has failed to consider the qualifiability of minorities and women. CPB concurs with Commissioner Hooks that:

> "...the term 'qualified' [should not be] used as an 'escape hatch' for any licensee who chooses not to hire, or to train a woman or minority who is qualifiable for a job merely because that person does not possess all of the rudiments of the 'perfect' or 'super' applicant...[Q]ualification should be viewed in context -- it is not an exlusionary term." 12/

Thus any determination of the availability of minorities and women should contemplate training institutions and training programs, some of which the licensee may undertake to qualify those persons who do not have the necessary skills.

13. Moreover, the Commission's guidelines for preparation of an availability study are deficient to the extent that they instruct broadcasters to consider only the Standard Metropolitan Statistical Area Data (S.M.S.A.), where it is available. If the station is not located in a metropolitan area, the Commission has instructed the broadcaster that U.S. Census data will suffice. 13/

14. CPB firmly believes that in order to adequately determine the availability of minorities and women, the broadcaster must consider several other factors, in addition to the presence of

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11/ 40 Fed.Reg. 145, §20 (1975)

12/ Concurring Statement of Commissioner Benjamin L. Hooks, 40 Fed.Reg. 145 (1975)

13/ 40 Fed.Reg. 145, §20 (1975)

qualified persons in the local area, as provided either by the S.M.S.A. data or Census data. For example, Revised Order No. 4 instructs contractors to consider at least the following factors:

> "(i)[t]he minority [and female] population of the labor area surrounding the facility;
>
> (ii)[t]he size of the minority [and female] unemployment force in the labor area surrounding the facility;
>
> (iii)[t]he percentage of the minority [and female] workforce as compared with the total workforce in the immediate labor area;
>
> (iv)[t]he general availability of minorities [and women] having requisite skills in the immediate labor area;
>
> (v)[t]he availability of minorities [and women] having requisite skills in an area in which the contractor can reasonably recruit;
>
> (vi)[t]he availability of promotable and transferable minorities [and women] within the contractor's organization.
>
> (vii)[t]he existence of training institutions capable of training persons in the requisite skills; and
>
> (viii)[t]he degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to minorities [and women]." 14/

Reasonable assessments of availability cannot be made by broadcasters unless most, if not all, of the above factors are carefully analyzed. CPB, therefore, recommends that the Commission require broadcasters to take these factors into account in studying availability of qualified and qualifiable minorities and women.

15. CPB recognizes, however, that S.M.S.A. data does not provide the best assistance possible for determining the avail-

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14/ 41 C.F.R. §§60-2.11(b)(1) and (2) (1974)

ability of qualified or qualifiable women and minorities in broadcasting. In fact, there is good reason to expect that the use of such data by broadcasters may yield somewhat inconsistent availability determinations, even where broadcasters are located in the same metropolitan area, because unfortunately, the S.M.S.A. job categories are general in nature, and are not designed for use by any single industry. Instead, the data is purposefully structured to aid as many industries as possible. Thus broadcasters' availability data may suffer from some degree of inaccuracy. CPB realizes that, despite the apparent inadequacy of the S.M.S.A. data, they are currently the best statistics to be used in determining availability, and that its inadequacy is not sufficient to completely discount its usefulness. 15/ In order for the broadcasters' determination of availability to be as accurate and as meaningful as possible, CPB feels that it is incumbent upon the Commission to provide and periodically update statistics on the national, regional and local availability of women and minorities qualified or trainable for positions in broadcasting. Such statistics could be used either in addition to, or as a substitute for S.M.S.A. data. At the very least, to reduce the possibility of inconsistent findings of availability, the FCC must provide guidelines to licensees on how to best utilize the S.M.S.A. data to suit the needs of the broadcasting industry.

15/ To assist its recipient stations in the preparation of availability studies, CPB will provide those stations with S.M.S.A. data for their metropolitan areas. The Corporation is also considering other methods of assisting its recipient stations in the development and implementation of their affirmative action plans.

2. Identifying Causes of Underutilization

16. Once an employer has found disparate employment as a result of the utilization analysis, and before meaningful steps can be taken to correct the deficiencies, principles of logic dictate that the employer should then determine the causes of the deficiencies. The Commission's proposed rules have ignored this important intermediate step. The proposal provides:

> "If there is a substantial incongruence in the proportion of minorities and women in the station's workforce and their availability in the local labor pool area, then each broadcaster should in its equal employment opportunity program describe the measures or steps it will follow to assure equal employment opportunity." 16/

Federal contractors are specifically directed to analyze and determine problem areas, and thereafter to take corrective action. 17/ CPB believes that the Commission must develop guidelines for assisting broadcasters in identifying probable causes of underutilization.

17. In this regard, the FCC should require licensees to include in their affirmative action plans, data by race and sex on applicant flow, hires, promotions, and transfers (the data should be submitted initially; not merely as a remedial step, as proposed 18/) The data could assist the broadcaster in evaluating how to: 1) increase its pool of applicants; 2) revise its job requirements or qualifications in light of a review of reasons often cited

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16/ 40 Fed.Reg. 145, §20 (1975)

17/ See 41 C.F.R. §60-2.23 (1974)

18/ See 40 Fed.Reg. 145, §25 (1975)

for failing to hire minorities and women; and/or 3) effectively examine promotion and transfer procedures to reveal possible discriminatory practice.

3. Recruitment and Training

18. CPB agrees with the Commission's position that recruitment and training are essential to correcting some causes of underutilization. The proposed rules however, merely state that licensees should recruit, train, and set forth the manner and extent to which these tasks are implemented. In the interest of effectiveness, it must be unequivocally stated that broadcasters must utilize female and minority talent sources, and training programs to aid in correcting past deficiencies. CPB agrees that the extent of all such efforts must vary according to station size and the nature of the workforce.

4. Goals and Timetables

19. CPB believes that the most effective method for a licensee to correct the causes of underutilization, which it identifies, is to adopt goals and timetables, as described in Revised Order No. 4. It provides:

> "The goals and timetables developed by the contractor should be attainable in terms of the contractor's analysis of his deficiencies and his entire affirmative action program. Thus, in establishing the size of his goals and the length of his timetables, the contractor should consider the results which could reasonably be expected from his putting forth every good faith effort to make his overall affirmative action program work." 19/

19/ 41 C.F.R. §60-2.12 (1974)

The Commission has proposed the use of goals and timetables as only one of three remedial steps which it may take when it appears that an affirmative action program is not achieving the desired results.

The Civil Rights Commission (CRC) has stated that:

> "Experience...has demonstrated that when [numerical goals and timetables] are omitted, the plan ceases to be a valuable tool for prompting change." 20/

It is ironic that the Commission chose to ignore this rather definitive assessment given by the CRC to the value of goals and timetables in the present proceeding, when these rules have been promulgated primarily in response to CRC's evaluation of present guidelines. CPB strongly suggests that the Commission should not overlook goals and timetables as being an essential element of the best means available to eliminate employment discrimination throughout the broadcasting industry.

20. The Commission is quite understandably concerned that there should be reductions in time for staff review, and reductions in costs to the broadcaster as a result of this clarification of its equal employment opportunity guidelines. As numerical goals and timetables are self-imposed and self-enforced, and are easily assessible and evaluated, the costs of broadcaster compliance, and the time for both FCC and public review are all substantially lessened. Finally, when goals and timetables are submitted, no remedial steps are necessary. The Commission's

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20/ To Regulate in the Public Interest, at 15.

staff has only to assess whether the broadcaster has exerted good faith efforts to meet the self-imposed goals.

CPB agrees with Commissioner Hooks that

> "...goals and timetables... become [the] measuring line for achievement and compliance, or, a 'promise versus performance' mechanism. Since licensee accountability and responsibility is the touchstone of our regulatory scheme, this is the best alternative." 21/

C. Exemptions

21. The FCC has proposed to exempt broadcasters with less than ten (or perhaps fifteen) fulltime employees from submitting any written affirmative action plan, and broadcasters with less than fifty (or perhaps twenty-five) fulltime employees would be exempted from developing workforce analyses. Due to its limited resources and funds, the Commission has decided to focus its enforcement efforts on the larger stations, which it assumes have a higher degree of job turnover and therefore, a greater number of employment opportunities. CPB strongly opposes any exemption, and recommends that each broadcaster be subject to these regulations.

22. The Commission's assumptions concerning large station job opportunities may be true. Nevertheless, the Commission has apparently overlooked the fact that these exemptions exclude significant percentages of the noncommercial broadcast industry. For example, CPB has found, based upon FY1974 data submitted to CPB, that if broadcasters with less than ten employees were exempted

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21/ Concurring Statement of Commissioner Benjamin L. Hooks, 45 Fed.Reg. 145 (1975)

from filing a written plan, approximately 93% of noncommercial radio would be excluded, and approximately 36% of noncommercial television would be excluded. Moreover, an exemption from developing workforce analyses for broadcasters with less than fifty employees would exclude 88% of noncommercial television and 100% of noncommercial radio. Thus, the Commission's exemptions appear somewhat arbitrary, in light of these figures showing that large numbers of the noncommercial broadcast stations would have no obligation to file an affirmative action plan, either as the Commission has proposed or to adopt a plan complete with a utilization analysis and goals and timetables.

23. CPB believes the exemptions to be unwise when it is considered that small stations, like their larger counterparts, have obligations to program to suit the diverse needs of their communities. One of the essential methods a station can employ to assure such programming diversity is to have a fully integrated workforce, comprised of persons who reflect the cultural and ethnic diversity of the broadcast service area.

Furthermore, such exemptions significantly decrease, if not totally abolish, the availability to the public of important discovery tools for determining the reasons for disparate employment of minorities and women in the station's workforce.

Finally, the exemptions ignore the crucial fact that smaller stations are perhaps the most important training ground for employees, and are therefore essential for upward mobility. Equal employment opportunity must therefore, begin at the entry level of the industry.

D. Enforcement and Monitoring

24. While CPB understands the need for administrative flexibility in enforcement of equal employment opportunity regulations, CPB is concerned that the Commission's rules fail to articulate any criteria for selecting licensees for compliance reviews. Such criteria may include, incidence of complaints, as well as the presence of data reflecting underutilization.

E. FCC Form 395 - Annual Employment Report

25. The current job designations, i.e. officials and managers, professionals, etc. as contained in the Employment Report have little or no relevance to those positions usually filled by employees at broadcasting stations. Licensee reports are therefore often haphazard and inconsistent. To promote uniformity, the reporting form must be revised to reflect the actual positions and titles that are used and available at broadcasting stations.

In a study of its reporting and informational needs, CPB is revising job designations and positions on its Annual Survey; the form completed and submitted to CPB by all noncommercial broadcast stations which receive CPB financial assistance. Upon completion of the study, CPB will forward the revised form to the Commission, with the hope that it will provide an effective benchmark for any amendments the Commission may make on its own reporting form.

26. CPB endorses the Commission's goal of making its equal employment opportunity regulations more effective for achievement of the full utilization of minorities and women in broadcasting. CPB feels, however, that the proposed rules do not provide broadcasters with sufficient guidance in the preparation of affirmative action plans, and that they are neither specific nor result-oriented. Hence, they fail to construct an adequate method of assuring nondiscrimination in all areas of the broadcasting industry.

27. CPB therefore recommends that the Commission require broadcast licensees to adopt affirmative action programs, with elements similar to those requirements embodied in the Office of Federal Contract Compliance's Revised Order No. 4. The FCC should, however, provide guidelines which reflect its attempts to specifically tailor the Revised Order regulations to suit the needs and goals of the broadcasting industry. Such a plan would include a utilization analysis, identification of the causes of underutilization, and goals and timetables. These are widely accepted as being the best means available for achieving the full integration of minorities and women into the national workforce.

28. CPB strongly opposes the Commission's proposal to exempt broadcasters with less than ten (or perhaps fifteen) fulltime employees from submitting any written affirmative action program, and its proposal to exempt broadcasters with less than

[illegible] ignored the fact that 1) significant percentages of broadcasters would be excluded from regulation in this area; 2) small broadcast stations have obligations to provide diverse programming; 3) the availability discovery tools for the public would be lessened, if not abolished; and 4) the crucial fact that small stations are the most important, or only real significant training ground for broadcasters.

29. Finally, in the interest of effectiveness, uniformity, and consistency in reporting, the Annual Employment Report (Form 395) job designations must be revised to reflect actual positions and job titles at broadcasting stations. In the near future, CPB will submit a form which contains such designations, with the hope that the Commission will find it helpful in its efforts to revise Form 395.

The principles of this filing have received the unanimous endorsement of the CPB Board of Directors.

Respectfully submitted,

CORPORATION FOR PUBLIC BROADCASTING

Thomas G. Gherardi

By: Thomas G. Gherardi
Secretary & General Counsel

Riley K. Temple

Riley K. Temple
Attorney

October 10, 1975

Mr. VAN DEERLIN. Thank you, Mr. Loomis.

It is CPB's policy to terminate support for any grantee found to be in violation of antidiscrimination laws but does this go beyond advising the grantees of what the law is or the policy or are abuses monitored in any way or alleged abuses?

Mr. LOOMIS. Alleged abuses are not monitored because we feel it is inappropriate for us to make a judgment of what is compliance and what is not compliance.

Mr. VAN DEERLIN. On something that you don't feel it is proper that you should be the enforcement agency?

Mr. LOOMIS. We feel that the judgment of what is compliance and the enforcement to bring someone into compliance can only be done by the appropriate Government department.

We feel we do not, as a private company, have the authority to do that, and we suspect that we could well be challenged in court if we tried to do that.

Mr. VAN DEERLIN. But you do advise them of what is required.

Mr. LOOMIS. Yes, and it is possible that we could be more explicit in outlining or summarizing the law, but we assume, and with I think good reason, that all of these licensees thoroughly read the law and are aware of it.

Mr. VAN DEERLIN. Would it be equally inappropriate, in your opinion, for CPB to put itself in the position of accepting formal complaints which then would be referred to the appropriate agency for review?

Mr. LOOMIS. No, this is in our policy now. Whenever we receive a complaint, and we have only received one, we state that it will immediately be sent to the appropriate Government department or departments, and we inform the department that we will do our best to assist them in getting data or whatever else may be of help to them. But they have the responsibility of making the judgment as to whether or not the station is in compliance and then taking whatever remedial action may be necessary.

Mr. VAN DEERLIN. You did refer the complaint regarding the National Public Radio in January of this year, I believe, to EEOC.

Mr. LOOMIS. That is correct.

Mr. VAN DEERLIN. This is covered on page 7 of your prepared testimony.

What is the status of that complaint? Has there been any action?

Mr. LOOMIS. We have heard nothing further from EEOC on that, and at least to my knowledge I have heard nothing from NPR as to whether EEOC has been in touch with them.

Mr. VAN DEERLIN. Justice has suggested that the Board might enter into an enforcement program with HEW. Does that suggestion intrude, as you see it, on the independence and the insulation of the CPB as it was devised?

Mr. LOOMIS. Yes, I believe it does, Mr. Chairman. Because neither you nor I are lawyers maybe we could talk in a way that is understandable.

Mr. VAN DEERLIN. Be completely free.

Mr. LOOMIS. Thank you.

I cannot quite understand how we can delegate something that we don't have. Our position is that we don't have the authority or the duty to either judge whether or not a station is in compliance or to enforce it.

We believe HEW already has that authority in virtually all of the cases and that, therefore, our delegating to them would be superfluous. They already have the authority, in our judgment.

Mr. VAN DEERLIN. And for the same reason I should suppose some sort of interagency task force would be unacceptable.

Mr. LOOMIS. I think an interagency task force of Government departments, the ones who will be before you later, might well be appropriate. I have no real views on that. I think it would be wrong for the corporation to be a member of such a task force because then it would be acting like a Government department.

Mr. VAN DEERLIN. I get you.

Majority Counsel?

Mr. SHOOSHAN. Thank you, Mr. Chairman.

I would like to follow up, if I could, a couple of your answers to Chairman Van Deerlin's questions, Mr. Loomis.

The statement of nondiscrimination that is included in each contract that you sign with one of your grantees—you have attached it to your statement.

Mr. LOOMIS. Yes.

Mr. SHOOSHAN. It is about a one paragraph, very general description of the responsibilities. Do you feel in line with what you alluded to in response to Chairman Van Deerlin's question that a more specific statement of responsibility—in other words, identifying appropriate Federal statutes and their applicability—could be set out in that contract?

Mr. LOOMIS. Yes, I think that might well aid the stations in knowing precisely what their responsibilities are, and we will try to do that.

Mr. SHOOSHAN. Also to follow up one of your responses to the chairman's questions about the need for a formal procedure for referring complaints, don't you feel it incumbent upon you in any way when you refer a complaint that is lodged with you on national public radio in January of this year to followup on that complaint? Don't you have an interest in seeing what is done even though the determination is being made by an entity other than your own?

Mr. LOOMIS. Yes, I think we ought to periodically check and I think enough time has gone since January that we should. I think there is no question about that.

As I said, this is the only complaint that we have received so we are not perhaps organized in a formal way.

Mr. SHOOSHAN. I think that is what the chairman meant when he suggested a formal complaint procedure which all grantees would be aware of—in other words, setting such a procedure up.

Mr. LOOMIS. I think the creation of a particular file, so that periodically we would check with the Agency to which we have referred the complaint to see what has happened, is certainly an appropriate thing to do.

Mr. SHOOSHAN. What about a formal complaint procedure that would be again written into all of your contracts with grantees explaining what you will do upon receipt of it?

Mr. LOOMIS. That can be done.

Mr. SHOOSHAN. Also, going back to the chairman's question to you about the Justice Department and its suggestions that you in some way enter into an enforcement program with HEW. You said you could not delegate what you don't have or at least that is the position of your lawyers, what about just simply cooperation in developing and gathering more information that could be of use to the Department of Health, Education, and Welfare? Isn't that also within the purview of a working arrangement?

Mr. LOOMIS. Yes. When we refer something to a department, and it is certainly true at all other times anyway, we will certainly cooperate with all the Government departments to try to get any data or facts that they consider pertinent or helpful. We feel that the corporation does have a responsibility to try to obtain the most accurate and complete data on all aspects of employment and programing and so forth. If there is specific data that we don't have, and a department feels it would be relevant and significant to it, we would certainly do our very best to get it.

Mr. SHOOSHAN. I think it was for that reason that the Chairman suggested that he might want CPB to participate in some status on an interagency task force to look at this problem so that the agencies could identify and you could respond to certain information needs that may not be being met at the present time.

Under those circumstances, would you consent to some kind of working arrangement with such an interagency task force?

Mr. LOOMIS. I think a working arrangement whereby they would give to us their needs, that is certainly appropriate and we would be happy to do that. Obviously, that means conversations with them to define precisely what their needs are.

I am not saying that we would not talk to them, that is not what I mean by that, but I think if you are going to form a task force we should not be a member of it. I think we should try to assist the task force, and we should provide information to the task force, anybody of that nature.

Of course, this data is now being gathered in cooperation with HEW, so it would have the data and it would be in a very good position to tell us what more is needed.

Mr. SHOOSHAN. I think the Chairman would also envision bringing in EEOC and the Justice Department to this task force as well.

Mr. LOOMIS. Oh, sure.

Mr. SHOOSHAN. You noted your discontent with the FCC's rulemaking on EEO for broadcast stations and one of the main differences you had and which was reflected in your filing with the Commission was the decision to exempt stations with 10 or less employees from filing a written affirmative action plan. Is there anything that would prohibit grantees who deal with CPB from filing with you—I am talking about all stations now—a written affirmative action plan that can be available for examination either here in Washington or locally as a part of their contractual arrangements with CPB?

Mr. LOOMIS. My off the top of the head answer to that would be yes, there would be concern. It seems to me that that is what the FCC is established to do and that it would——

Mr. SHOOSHAN. The FCC has chosen to exempt stations with 10 or less employees, you have taken issue with that and I am wondering whether you have any thoughts about filling that vacuum.

Mr. LOOMIS. I think this would get awful close to our getting into the compliance business, and ordering the stations to do something which is not a direct part of broadcasting when there are Government departments and Government laws requiring them to do it.

Mr. SHOOSHAN. Well, as I understand is, the exemption that the Commission has envisioned does not exempt the stations from having an affirmative action program but rather from filing a written affirmative action plan.

So you are not going beyond enforcement procedures in the Commission, you are simply making again another information source available for review.

Mr. LOOMIS. What I would like to do, with your permission, is to consider this and discuss this with the Board members. This is really the kind of fundamental policy that I think really ought to be made by the Board, and not by me, and certainly not off the top of my head now. But I will be glad to give this consideration, and bring it before our next Board meeting with a recommendation to them.

Mr. SHOOSHAN. Mr. Chairman, I have just two very quick questions.

You talked about what you are doing to encourage minority ownership of public broadcasting stations. You talked about the "how to" booklet that you have put together and various other efforts. Is there anything in your mandate that would prohibit the Corporation for Public Broadcasting from considering grants to encourage minority ownership of public broadcasting stations?

Mr. LOOMIS. No. In fact, I think we have a program along those lines. We do have a program for helping radio because television is a different situation. With new radio stations we give them help to get started and organize a group and so forth, and then further help as they go down the line. We have looked specifically at stations that would deal primarily with minority audiences and, therefore, presumably minority ownership of the station itself.

I know one we have been involved in with a group of Navajos. They have had a radio station in Ramah, N. Mex., since 1972. There are others and I know there have been discussions with half a dozen different black colleges as well. I would be pleased to supply more detailed information on Indian-run stations.

[The following information was received for the record:]

NATIVE AMERICAN INVOLVEMENT IN PUBLIC RADIO

In 1972 radio station KTDB-FM began broadcasting in Ramah, New Mexico, as the first all-Indian public radio station in the country. Situated in the middle of a huge Navajo Indian Reservation high on the arid plateaus of northwestern New Mexico, the station acts as newspaper, telephone and center of news and information for 1500 Navajos. Over half of the programming is in the Navajo language. It features special programs on Navajo culture, consumer education and legal information, as well as music programming with students from the Ramah Navajo High School serving as announcers. The station is also a training ground for young Navajos in electronics, radio engineering and communications.

KTDB–FM has been a CPB-qualified station since it first went on the air in 1972. The station has received Radio Community Service Grants totaling $52,725 as of July 1, 1976.

Another all-Indian radio station went on the air in the Fall of 1975. KEYA–FM broadcasts to the Turtle Mountain Chippewa Indian Reservation in Belcourt, North Dakota. The programming on KEYA is also multi-lingual. The station was established with the help of a CPB Coverage Expansion grant in FY 1974 of $25,000.

A third radio station involving Native Americans is a tri-lingual, tri-cultural station in Albuquerque, New Mexico, KHFC–FM. The station was established with substantial support and involvement of the Pueblo Indians of the Albuquerque area and programs material for Indian, Spanish-speaking and Anglo audiences. Established under the New CPB Radio Coverage Expansion Project, with target areas of 350,000 population or more, KHFC has so-far received $108,350 from CPB in grants and matching funds. Under the New Coverage Expansion Project, the station must meet more stringent requirements for qualification than the majority of stations in the public radio system.

Mr. SHOOSHAN. Actual funding in the form of a grant?

Mr. LOOMIS. That is correct.

Mr. SHOOSHAN. My last question, Mr. Loomis, is in the fall of last year your own task force on women in public broadcasting presented to you a report which was a fairly comprehensive indictment of the role of public broadcasting in providing job opportunities for women and they set out a number of specific recommendations in this study.

Perhaps for the record so that we don't take any more of the committee's time today, could you respond by following up on the various recommendations on that task force study as to what CPB has done?

Mr. LOOMIS. We had a first report that was made 3 months after that in March. I can give you a copy of that. That report was to our Board at their request.

Then the annual report on EEO matters which is attached to my statement, and you probably have not had a chance to read it yet, was just finished and really covers that. I don't know what more we can add. It is mixed; it is not just the women's report, it is minorities and women but it goes through the whole thing and tries to say what we have done.

Mr. SHOOSHAN. Could you—well, all right.

Mr. LOOMIS. I could summarize, pull out of that.

Mr. SHOOSHAN. To the extent that the specific recommendations set out in this report are not addressed by material that you provided for the record, could you provide that material?

Mr. LOOMIS. Be happy to do so.

[The following status report was received for the record:]

STATUS REPORT—IMPLEMENTATION OF TASK FORCE ON WOMEN IN PUBLIC BROADCASTING RECOMMENDATIONS

When the CPB Board accepted the report of the Task Force on Women in Public Broadcasting at its November 12, 1975, meeting, the Board requested that CPB report back to the Board in three months regarding progress in implementing the recommendation of the Task Force. That report was submitted in February by the acting head of Women's Activities. This report is an update.

An acting head of Women's Activities was appointed on a part-time basis in November, 1976. An analysis was made of which policy, implementation and employment recommendation could be effectively addressed, and which would require long term planning.

Action was immediately taken on the employment recommendations which were basic to any desired change and because many could be addressed within the CPB structure. It was apparent that several of the recommendations neces-

stated merely a different approach to the problem by CPB. All program recommendations were directed to CPB's Program Coordinators for similar analysis concerning CPB's role in programs it funds. CPB Program Coordinators have started to work directly with the program producers and project agency to ensure that the program reflects the concerns of, and involvement of, women and minorities.

RECOMMENDATIONS—EMPLOYMENT

1. Employment of women in public broadcasting is highest at the lower levels of responsibility, lower at the middle levels, and extremely limited at the highest levels. Women make up slightly less than 30 percent of the public broadcasting work force, but for a variety of reasons they rarely are hired for, or promoted to, upper-level positions. To increase the number of women in decision making positions:

A. Public Broadcasting should cooperatively explore ways to enlarge the pool of qualified applicants with special concern on women.

Action: The Department of Human Resources Office and Training and Development has contracted with National Association of Educational Broadcasters (NAEB) to provide CPB with information on alternative approaches to developing and operating a "Human Resources Bank." It is expected that a "job bank" will be in place before the end of this year.

B. Public broadcasting should be encouraged to fill upper-level positions where possible with existing lower-level staff, with special emphasis on women.

Action: CPB in consultation with PBS, NPR, APTS, and NAEB is exploring In-Service Training Programs. The objective of this training program would be to increase the pool of resources at the station level.

C. Public broadcasting should develop guidelines for recruiting from other fields.

Action: The Department of Human Resources is in the process of the developing guidelines with the personnel office to expand CPB's recruitment lists and contacts.

D. Provisions should be made to continue the monitoring of trends in the employment of women.

Action: CPB conducts an annual survey. The data gathered in the survey is utilized to monitor employment trends of women.

2. CPB should encourage full implementation of the policy—equal pay for equal work—and should monitor salary levels to achieve compliance with this policy.

Action: The EEO Officer is seeking data to devise a monitoring system.

3. CPB should take a leadership role in structuring its staff to include a fair and equitable distribution of women in its upper-level positions. The Corporation should encourage NPR, PBS, and other broadcast entities to adopt a similar policy.

Action: CPB's Affirmative Action Plan specifies this as a goal. In measuring progress in Category 3 (level 9 and above) females, the Corporation has gone from 0% in December, 1974, to 3% in December of 1975 to 20% in June, 1976.

A further indication of CPB's progress was to appointment of the first women officer of CPB as Vice-President of Public Affairs. The Corporation is continuing to provide a positive model for NPR, PBS, and other broadcast entities.

4. A special assistant to the president of CPB should be appointed to head a CPB Office of Women's Affairs.

Action: The Office of Women's Activities was developed within the new Human Resources Department. A director was hired in June, 1976.

5. CPB program officers should be charged with initial consideration and follow-up vigilance to insure compliance with the equal employment opportunity clauses in both the CPB community service and direct program grants.

Action: We are investigating the procedures necessary to implement this recommendation.

6. CPB should develop strategies to insure the inclusion of women at all levels of public broadcasting. Towards that end:

A. "Management seminars for public broadcasters should be established and stations should provide the special means to assure that women could attend."

Action: CPB and the NAEB, in coordination with the Harvard Business School has been planning Advanced Management Development programs at Harvard, in the form of seminars for managers on how to be a better manager. The experience level required for attendance precluded all but existing top level managers. However, discussion will continue with the purpose of developing "inovative plans"

to assist stations in placing special emphasis on women with regard to attendance at other management training seminars such as the NAEB EBI "Improving Management Skills" designed to assist individuals in becoming station managers.

8. Equal employment workshops should be established for both men and women.

Action: The first CPB EEO workshop was held in Washington on January 13, 1976. The next workshop is scheduled for October 13, 14, 1976, in San Francisco, California. Other regional workshops are anticipated.

7. CPB should establish grants that would provide training opportunities including management training.

Action: CPB Women's Training Grants program was developed in April, 1976. The first round of 14 grants were awarded in May, 1976. The second round of grants will be awarded in October, 1976. The Women's grant project places priority on filling mid and upper level positions with existing lower level female staff wherever possible. This project and other intern or fellowship projects are coordinated by the Department of Human Resources, office of Training and Development.

8. CPB should strongly urge that FCC job description categories . . . accurately reflect the degree of responsibility involved and that the FCC should immediately re-evaluate and change those categories where necessary.

Action: CPB not only urged the FCC to change their job description categories, but provided suggested new job categories in the CPB filing with the FCC regarding EEO guidelines for all stations. The FCC guidelines recently issued did not reflect our suggestions. However, CPB is continuing to meet with FCC on this issue.

There has been little action on the two major recommendations compliance with EEO laws. The CPB Board resolution of November 12, 1975, regarding the Task Force Report specifically prohibits any action with regard to the recommendations which would be inconsistent with the previously adopted EEO and CPB Assistance Policy. That policy stressed the lack of legal authority by CPB to investigate EEO noncompliance.

Conclusion: CPB is proceeding to implement the Task Force recommendations. The new Department of Women's Activities has primary responsibility in this area. The Director has intentions to utilize the Task Force Report as a guide for future activities. In addition, the original Task Force on the Status of Women in Broadcasting is being reconvened to assist in [illegible] planning of activities for the office.

Mr. SHEUMAN. Thank you.

Mr. VAN DEERLIN. Mr. Coleman, minority counsel.

Mr. COLEMAN. Thank you.

I have one question, Mr. Loomis. When the chairman was discussing with you the possibility of internal monitoring procedures by CPB you pointed out that it would not be keeping with CPB status as a private corporation to engage in those and referred to the complaints. How does CPB differ from any other private nonprofit corporation that could monitor public broadcasting stations and refer those complaints to the appropriate Government agency?

Mr. LOOMIS. How do we differ from any other private organization? Is that your question?

Mr. COLEMAN. Yes. With respect to monitoring, how could you differentiate between CPB and any other private nonprofit corporation that felt it incumbent upon them to monitor possible abuses of EEO policies and refer those complaints to the appropriate Government agency? How would you differ from a private corporation?

Mr. LOOMIS. In an area other than broadcasting?

Mr. COLEMAN. Yes.

Mr. LOOMIS. I think the problem with broadcasting, public or commercial, is the first amendment and the problem of noninterference by the Government with programing.

As you remember, the law which set us up specifically said that we must be free from undue influence by Government departments and those under us must be also free from undue Government interference and that our main function was to be a heat shield between the Federal Government and the programing decisions of the individual licensees.

So I think there is a significant difference in this activity because of that peculiar sensitivity of Federal money being in domestic communications. This activity of public broadcasting is the only place, to my knowledge, where you have Federal money being spent for domestic communications.

Therefore, the first amendment is always in front of us and it is a complex and delicate function to try to provide the funds to public broadcasters without undue influence and yet at the same time be accountable to the Congress and to the executive branch who provide most of the funds to us.

This is a very, very delicate and I believe unique problem. I don't think anybody else has this precise problem that we do.

Mr. COLEMAN. That is all I have, Mr. Chairman.

Mr. VAN DEERLIN. Thank you, Mr. Coleman.

Thank you, Mr. Loomis, for your helpful testimony.

Mr. LOOMIS. Thank you, Mr. Chairman.

Mr. VAN DEERLIN. We are going to hear next from the representative of the Justice Department, Mr. J. Stanley Pottinger, Assistant Attorney General for Civil Rights.

I understand that you have an absolute commitment which will take you at noon and, therefore, rather than hurry the testimony of the witness who was scheduled next, Mr. Grossman of the Public Broadcasting Service, we are going to ask you to submit your testimony now, Mr. Pottinger.

STATEMENT OF J. STANLEY POTTINGER, ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, DEPARTMENT OF JUSTICE

Mr. POTTINGER. Thank you very much, Mr. Chairman.

My name is Stanley Pottinger, Assistant Attorney General in charge of the Civil Rights Division in the Justice Department.

I would like to say at the beginning that I do support the efforts of the committee in addressing the difficult problem of balancing the need for minority and female representation in public broadcasting with the policy of minimizing government interference with that industry.

The act of Congress which the Justice Department is concerned about is primarily the 1964 Civil Rights Act and specifically titles VI and VII of that law.

Now title VI, section 601 prohibits discrimination on the basis of race, color or national origin in any program or activity which receives Federal funds. I should point out, Mr. Chairman, that this particular statute does not include sex discrimination in it because sex discrimination is not a prohibited activity in section 601 of title VI.

However, under title VII of the Civil Rights Act which deals with employment discrimination, sex discrimination is prohibited and in addition to that title IX, as you may know, in the field of education

prohibits the sex discrimination in any program or activity covered by that statute.

So, to the extent that title VI does not reach sex discrimination, there are other provisions which do and it seems to us both as a matter of law, therefore, and as a matter of policy, any solution to the problem which is identified as a race discrimination problem should encompass sex discrimination as well.

The enforcement mechanism created by title VI found in section 602, requires each Federal department and agency which is empowered to extend Federal financial assistance to set up rules and regulations applicable to recipients of the financial assistance, and further provides for an enforcement procedure which permits either the termination of Federal financial assistance or any other action permitted by law, and that usually means referral of the case to the Attorney General for the institution of litigation.

Now, under title VI, primary responsibility for enforcing the prohibitions against discrimination is placed on the agency which grants the money assistance. In addition to that, however, Executive Order 11764, which was signed in January of 1974, places a responsibility on the Attorney General to coordinate enforcement of title VI among Federal departments and agencies and to prescribe standards and procedures regarding implementation.

In this connection, Mr. Chairman, I would like to note that just a few days ago proposed rules were published in the Federal Register by the Justice Department to help set guidelines and regulations for the uniform enforcement of title VI among Federal agencies which make money grants.

In connection with our responsibilities under the Executive order, members of our Federal program section in the Civil Rights Division met with representatives of the Corporation for Public Broadcasting during the later part of 1974 to discuss what we believed were their responsibilities under title VI and to develop or attempt to develop an enforcement program.

These meetings culminated in a letter which I sent on March 26 to the General Counsel of CPB containing the opinion of our Division that CPB was obligated to insure that Federal funds received and distributed by CPB were in fact expended or should be expended in accordance with the provisions of title VI.

I am submitting a copy of that letter [see p. 78]. I believe some of the members of the subcommittee are already familiar with it in the course of their discussions with CPB officials and our office.

In other words, the first threshold question, Mr. Chairman, has to do with whether section 601 of title VI does or does not cover Federal money which is spent through CPB.

Following receipt of this letter, Mr. Gherardi asked to discuss the matter with me and my staff and we did meet on June 2, 1975, and members of my staff met several times thereafter with CPB officials. Mr. Gherardi expressed the view consistently that because CPB is not a government agency it was the view of his agency that they were not subject to the requirements of title VI. This is a view, I think, consistently taken by CPB and which was the subject of testimony by Mr. Loomis.

Our position was a different one, as it is still, and that is that although CPB may not be a government agency within the meaning of section 602, this means only that they are not required to adopt the regulating procedures envisioned by that section; but the Corporation, since it is a recipient of Federal funds, we believe is subject to the nondiscrimination provisions of section 601.

In other words, the basic provision of title VI that says that Federal money, however it is spent, whether through a private nonprofit corporation or a government agency, shall not be spent for discriminatory purposes.

We believe that covers money from the Federal Treasury that runs to recipients through CPB as through any other agency.

More importantly, we believe that CPB is, therefore, obligated to insure that subrecipients, therefore, do not use their subgrants in ways which will exclude racial or ethnic minorities from the benefits that those grants provide.

This view was also expressed in a letter dated August 12, 1975, to CPB, a copy of which we are submitting [see p. 78].

CPB has, of course, published a nondiscrimination policy to each of its subgrantees. This policy relies on Federal courts and agencies other than CPB, of course, to determine whether there have been violations of the discrimination prohibitions.

I have advised CPB that I do not believe that this alone fulfills their responsibilities under title VI, at least, as we now have title VI, and its relationship to the Federal agencies constructed by law.

Officials of CPB have indicated that more affirmative action on their part is not possible because of their limited staff. I think there are other reasons also that speak for themselves, as Mr. Loomis has indicated here this morning.

We have suggested that CPB, in view of this limitation, might make arrangements with another agency. In 1974 we suggested HEW because they showed a willingness to enforce education grants that were made under their jurisdiction—that is, money that was dispensed through HEW—to some of the same grantees that Mr. Loomis indicated received CPB funding.

We had suggested that they make an arrangement that would be satisfactory to HEW and CPB since they had this existing authority at HEW possibly to use HEW's expertise and resources to the extent they might be available, and that was unclear, but as a concept, to the extent that they might have been available to continue education grant compliance reviews at HEW in effect advising CPB of violations that might have arisen in programs that were funded by CPB moneys.

The efforts of our Division represented an attempt to set up an enforcement mechanism which would, through the carrot and stick use of Federal funds, not only insure that minority interests are represented in public broadcasting, but would decide what the nature of that representation is to be. We have not attempted to define for CPB the area of public broadcasting which does need attention.

It is obvious, however, that what is important in the use of these funds is that minority interests somehow be served and women's interests somehow be served in programing.

This need presents very delicate problems for any government agency which enters this field, and we recognize that given its sensi-

tivity and the general purposes of Congress expressed in 47 U.S.C. 398 that public broadcasting be protected from "extraneous interference and control."

So while it is my belief that CPB has the expertise, or we would hope so, and the authority which we believe exists to make judgments about programing to reach minorities and women, I do not believe that either I or the Justice Department or our Division should be directly involved in making programing decisions, as that is not our expertise.

Mr. VAN DEERLIN. I am sure they will be relieved to hear that.

Mr. POTTINGER. Yes.

But I am not finished.

Subsequent to our contacts with CPB the Congress considered and passed the Public Broadcasting Financing Act of 1975 which provides for 3 additional years' authorization for Federal funds to the public broadcasting industry.

During the consideration of that act, as you probably know, there was an attempt to amend it in the House so that CPB would be required to assume a regulatory function with regard to title VI. The conference committee which deleted that amendment in House Report No. 94-715 reported that:

> The Senate Conferees objections were based on a technical problem in the amendment and on a concern that the House language would place the Corporation for Public Broadcasting in the posture of a Federal department or agency responsible for promulgation and enforcement of civil rights regulations. The Senate Conferees stated that placing CPB in such a posture would be in clear conflict with the intent of Congress to establish CPB as a private corporation in Section 396 (b) of the Act.
>
> Moreover, the Senate Conferees were of the view that existing Federal agencies mandated to enforce civil rights laws should be required to implement those laws with regard to public broadcasting, rather than placing that responsibility on CPB.

So it now appears that those efforts which we made to persuade CPB to assume an active enforcement role with regard to title VI as a matter of law now may well be beyond what the Senate conferees and perhaps the entire Congress believe they should be required to do.

Obviously we recognize that. Unfortunately, however, this leaves a significant amount of Federal money in an enforcement vacuum. As I indicated, the Department of HEW exercised some oversight of title VI compliance of some public television stations which receive educational grants but no Federal agency dispenses CPB funds by way of a "grant, loan or contract" the way most Federal funds are distributed and, therefore, under existing law there is no Federal agency today other than CPB on which to place the primary enforcement responsibility envisioned by title VI with regard to its basic nondiscrimination requirement.

It was for this reason that we thought CPB might enter into an arrangement with HEW or another title VI agency. That is not the critical factor by which such an agency might use its established civil rights resources to monitor in the case of HEW not only HEW grantees but also CPB grantees.

This would then cover Federal money presently in a vacuum. As I reported earlier, neither this arrangement nor any other variation on this theme has come to pass nor, when I speak of a variation on this theme, has it come to pass that some other mechanism, whether it

were an agency other than HEW, EEOC or any other existing Federal agency, has been clearly designated by the Congress or CPB to have the responsibility to make sure that nondiscrimination prevails with regard to Federal money.

The subcommittee may wish to consider whether direct involvement of some executive agency and programing decisions of public broadcasting is a desirable thing.

Certainly it would not advance the interests of the public generally that extensive regulation of this subject matter be performed. Yet title VI language seems to apply to programing decision as well as others in federally funded broadcasting.

We suggest that a more desirable way to accomplish this goal would be to insure minority representation and the representation of women on the policymaking bodies of public broadcasters who receive Federal funds. In this way as a matter of general concept we would tend to avoid programing decisions by a distant Federal civil rights compliance office which presumably does not have the expertise to make such decisions but would help to insure that minority and female viewpoints of and by the locality involved are taken into account in programing decisions.

As the subcommittee may be aware, Government agencies are prohibited under section 604 of title VI from taking action under that title with respect to employment practices. Nonetheless, we believe that if requiring minority representation on policymaking bodies is the only realistic way to carry out the purposes of title VI, then that is what should be done.

So again the question is who is to enforce this requirement of nondiscrimination which attaches to Federal money? In accordance with the statutory scheme, the Justice Department has in the past brought suits to enforce title VI but in public broadcasting no agency has referred any such case to us for action.

Some regulation of employment as well as broadcasting practices is also done by the FCC, as we know. This arises from their duty to grant and revoke licenses in the public interest but has nothing to do with the way Federal funds going through CPB are used, funds which appear to be subject to title VI.

Again whether FCC could or should undertake a compliance role in this area is a matter which the committee may want to consider. It appears to us at this point both by inclination and statutory scheme that is unlikely.

Another means of regulating employment practices is through title VII of the Civil Rights Act, and this act makes it an unlawful employment practice for any employer to discriminate with regard to race, color, sex, religion, or national origin.

Now the principal enforcing agency for this title is the EEOC. However, the Attorney General does have authority under section 706(f) to bring civil actions against employers which are State or local government or Government agencies upon a referral of a complaint from EEOC.

In addition, it is our position that the Attorney General has authority to bring suits against State agencies which are engaging in a pat-

tern or practice of employment discrimination under section 707. Without detailing all of these provisions, I should note that two district courts have disagreed with us on the existence of this latter self-initiated authority—that is, an authority for the Justice Department to act without a referral from EEOC—and those two courts have dismissed pattern or practice suits that we have brought on that basis.

We are appealing those decisions but until that authority is clarified our ability to act in the area of employment discrimination without a referral is, to put it bluntly, uncertain.

While our authority to bring suits to redress complaints referred to us from EEOC remains intact, we have not again received a referral from EEOC in the area of public broadcasting. I am not certain of the extent to which public broadcasting stations are State agencies and that would, of course, determine whether any suits—if suits are appropriate—should be handled by EEOC, if they are not State agencies, or by our office, if they are.

However, focusing on individual complaints of discrimination or even "pattern and practices" of discrimination in employment generally may be somewhat off the point in the field of public broadcasting. If the inquiry is solely about employment for the sake of employment, of course there is nothing which, in law, sets the broadcasting industry apart from any other industry.

But if the concern, as I take it is, is about employment practices because of what they mean to the interests of minorities and women in receiving the benefits of public broadcasting which is funded by tax dollars, then that problem ought to be addressed directly which I take it it is being addressed here today.

The usual employment discrimination suit may or may not deal with this problem effectively.

One complicating factor in this regard is that section 701(f) of title VII may—it is not clear but may—exempt from coverage many policymaking positions of State-operated public broadcasters.

So again it brings us back to the central question. The way that minority interests will be represented in public broadcasting and the way that minorities will find their way and women will find their way into the policymaking positions into broadcasting images of the public broadcasting industry is through enforcement of title VI and related statutes by regulation, investigation and a review of upper lever staffing decisions.

That is probably the only way, unfortunately, in which in this stage of history we are going to see a change occur. But this cannot be done until it is settled who has the responsibility to perform that function and by what standards it should be performed, keeping in mind the sometimes conflicting objectives of programing which should be unfettered by Federal directives on the one hand and fair and nondiscriminatory programing and employment for which someone in the Federal Government obviously must have the responsibility on the other.

That ends my prepared statement. I will be happy to take questions.

[The letters referred to follow:]

DEPARTMENT OF JUSTICE,
Washington, D.C., March 26, 1975.

Mr. THOMAS G. GUERARDI,
General Counsel, Corporation for Public Broadcasting, 888 16th Street NW., Washington, D.C.

DEAR MR. GUERARDI: During the past several months there have been discussions between the staff of the Federal Programs Section of the Civil Rights Division and your office concerning CPB's Title VI responsibilities.

The Civil Rights Division is of the opinion that Title VI coverage extends to all programs and activities receiving federal financial assistance regardless of the vehicle used to distribute that assistance. Because there is no federal agency or department which funds and supervises CPB programs and activities, we think that CPB is obligated itself to ensure that the provisions of 42 U.S.C. 2000(d) are carried out. We recommend that this be done by requiring that each recipient of CPB financial assistance sign a contractual commitment to comply with Title VI.

In addition to obtaining such commitments we think CPB is required to ascertain whether the recipients of CPB assistance are in fact complying with Title VI.

This could be done by having CPB conduct Title VI compliance reviews itself, or by delegating that authority to a federal agency. Because of CPB's limited staff and because persons from the Department of Health, Education, and Welfare already conduct Title VI compliance reviews of noncommercial stations receiving federal assistance from HEW, a delegation of authority from CPB to HEW would appear to be an efficient way to monitor compliance with Title VI. Of course the terms of any sort of delegation would have to be agreed to by both CPB and HEW.

Be assured that the Civil Rights Division personnel are available to assist you in developing an effective Title VI enforcement program. We look forward to receiving your views on this matter.

Sincerely,

J. STANLEY POTTINGER,
Assistant Attorney General, Civil Rights Division.

DEPARTMENT OF JUSTICE,
Washington, D.C., August 12, 1975.

Mr. THOMAS G. GUERARDI,
General Counsel, Corporation for Public Broadcasting, 1111 16th Street NW., Washington, D.C.

DEAR MR. GUERARDI: In my letter of March 26, I informed you of the Civil Rights Division's opinion that the programs and activities funded by your Corporation are covered by Title VI of the Civil Rights Act of 1964. As members of this Division have previously informed you orally, we believe that coverage to extend to Section 601 of that Act (42 U.S.C. Section 2000d), although not to the procedural provisions of Section 602 (42 U.S.C. Section 2000d–1).

We continue to be hopeful that we will be able to assist you in the development of a Title VI enforcement program.

Sincerely,

J. STANLEY POTTINGER,
Assistant Attorney General, Civil Rights Division.

MR. VAN DEERLIN. It is your view, Mr. Pottinger, that Federal funds remain Federal funds for the purposes of grants to stations even though they may be comingled with private funds and foundation grants and State funds and all the rest that go into public broadcasting?

MR. POTTINGER. Well, more important than the fact that that is my opinion, I think that is the opinion of the courts and of the Congress.

MR. VAN DEERLIN. It is your interpretation of the law.

MR. POTTINGER. Yes, and of those who passed the law.

MR. VAN DEERLIN. Isn't the enforcement problem that is unfolding here today largely a result of antidiscrimination laws that just don't

mesh or that leave large gaps through exemptions and other legislative limitations, and this being so has your office considered the possibility of recommending omnibus antidiscrimination legislation to alleviate the problem?

Mr. PERRYMAN. When I hear the word "omnibus" I get scared. If we did that, it would take about 5 years to do it, I am afraid.

Yes, I think that it is fair, Mr. Chairman, to say that there are areas that don't mesh and perhaps my characterization would be a little different and that is that there are conflicting objectives here.

No one, including women and minority groups, wants civil rights compliance officers, people like myself, making programing decisions based upon conventional orthodox civil rights law enforcement responsibilities.

Mr. VAN DEERLIN. If you think the word "omnibus" scares you, you can imagine how that kind of talk would scare many of us.

Mr. PERRYMAN. Well, it already has and I think that for reasons that are understandable, I don't think you are going to find anyone arguing that position. That is a red herring. The notion that civil rights officers are going to decide whether the "Adams Chronical" is produced or whether something else is produced has never been suggested and I certainly, for one, would not.

I think it would be a disaster to have our office or myself making programing decisions. That is on the one hand and we all recognize it.

On the other, we have the Federal money still flowing in the compliance vacuum with other civil rights laws; that is to say, that nondiscrimination in the use of Federal funds would appear to cover a use of Federal money in programing.

Now those objectives, both of which are worthy—and I should also add, by the way, I have not heard serious arguments that that latter is not true. That is to say, that Federal money can go to a local station which can use it for discrimination in its employment practices in that broadcasting facility or in their programing.

No one is also making that argument, at least that I have heard, so everyone, apparently, is in agreement with two worthy objectives—unfettered programing decisions on the one hand and fair programing without discrimination on the other.

Mr. VAN DEERLIN. I think you made a valid point when you said that if you find a way to solve the discrimination in employment you are probably going to have a great bearing on assuring the representation of all ethnic interests and programing.

Mr. PERRYMAN. I think so. I was about to say that I think before one can quibble about whether EEOC or CPB or HEW or the Justice Department should have the responsibility, it is important first to understand what it is we are trying to achieve. Are we trying to achieve representation through some Federal enforcement or are we trying to achieve it by having a fair representation and a degree of authority with women's groups, or women, and with minorities, or minority groups, minority males operating in the programing decision and decisionmaking levels.

If you get that, it seems to me you will have not only have gone a long way to solving the problem of programing—so that minority representatives and women are truly in a position to make decisions

about what should go out on the air waves—but you will also have avoided, to a large extent, the obvious conflict that now arises with having a more distant bureaucracy like our own making programing decisions inadvertently or purposefully.

I suppose that even if we don't purposefully make programing decisions, we might inadvertently do that.

Mr. VAN DEERLIN. You said that your suggestion about having HEW monitor CPB grantees had not been acted upon. Had you ascertained why HEW didn't act on this suggestion? Did you get a response from them? Did you try?

Mr. POTTINGER. Yes. HEW was not in a position where it could act without a request from CPB. CPB's reasons for not doing it, I think, are clear and there is nothing nefarious about them. They have two reasons, as I understand them.

First they do not believe that the Federal money that passes from their coffers to grantees requires them to engage in a compliance role.

In other words, they disagree with our interpretation of title VI and, second, they point out that they don't have enough staff even if they had a view of the law that was the same as ours. They don't have enough staff to do it.

We seem to have moved in our initial discussions past the first question because, quite frankly, I think that their view on that—this is obviously my view—but I think it is a loser. I think if they don't acknowledge that responsibility and if this committee does not do it, some litigant is going to force it upon them in the courts which I do not think is a smart way to do business. But, be that as it may, hypothetically speaking, we talked about the possibility of moving past that point and assuming that, whether it is the Congress, the laws as they exist or private litigants in the courts that require Federal funding not to be used for discriminatory purposes, how do you get that enforced? At that point, their concerns were openly stated and that was, first of all, because of the unique characteristics of CPB and it is unusual, it is very unique—that they did not want to give a flavor or a patina of Federal regulation to their activities so that even if they had staff they didn't want to get into that business.

So we then talked about finding staff in other parts of the Federal Government. HEW had just begun an active program of enforcement in their educational television grants. In fact I think they were the only agency to do that, and so we looked to that agency to see if they might help pick up the slack, as it were, not only responding to complaints about HEW funded programing but, to the extent they overlapped, looking at programing that raised complaints against CPB.

HEW, as far as I know, would have entertained that view but, frankly, we didn't get into more finite discussions with HEW because CPB chose not to do that.

Mr. VAN DEERLIN. Were you in the room, Mr. Pottinger, when the idea was advanced for an interagency task force that might address itself to some of these unanswered problems?

Mr. POTTINGER. Yes, I was.

Mr. VAN DEERLIN. How does that set with you?

Mr. POTTINGER. Well, it sounds to me like it might be very helpful. It is presumptions of me to come telling CPB what to do when they

feel that way, too, but I also heard Mr. Loomis say that CPB should not be on such a task force. I would have to disagree with that because I think that CPB, even given their view of their responsibilities, ought to have some input on what responsibilities would be defined by such a task force because it is going to vitally affect CPB.

I don't think it is possible, frankly, for them to avoid the implications of what is happening here.

Mr. VAN DEERLIN. Well, I understood the thrust of Mr. Loomis' testimony to be that he would very happily make input but that he didn't think they should be formally a part of an organization to enforce a responsibility which he believes they do not have.

Mr. POTTINGER. I may have misunderstood him. I think to have the input is very important, whatever the format for that is.

Mr. VAN DEERLIN. Mr. Shooshan.

Mr. SHOOSHAN. Thank you, Mr. Chairman.

Mr. Pottinger, in your statement you said that one of the ways that you found to be preferable in dealing with this problem is to insure a minority representation at such levels where the policy decisions were being made.

Has the Justice Department had any formal input, for example, with the White House in making determinations as to CPB Board nominees? The nomination process is in the province of the White House. Have you expressed your concern or have you sought any formal role in that procedure?

Mr. POTTINGER. No, we have not.

Mr. SHOOSHAN. Is there anything to preclude you from doing that?

Mr. POTTINGER. No, I don't think so. No, not at all. I think we could say to the appointive authorities what I have said here and that is that there ought to be a high degree of sensitivity in that regard.

If I may go on for a moment, I was thinking as much about programing decisions that are made locally as I was at CPB. It seems to me that CPB has a responsibility here, too, and perhaps they are meeting it, I don't know. But locally I think that it is critically important for grantees to have that capability, too.

Mr. SHOOSHAN. But inasmuch as you can have some direct and hopefully persuasive input into the nomination process for the Corporation for Public Broadcasting Board which, obviously, is the umbrella group making many of the key decisions here, you feel that might be something that your department might want to pursue.

Mr. POTTINGER. I think that I will make that commitment to you. Whether it actually has influence is more speculative but I will be happy to look at it.

Mr. SHOOSHAN. For example, there is a note in the broadcasting trade press this morning that one of the nominees or proposed nominees to the CPB Board to fill one of the existing vacancies is being opposed by a national black group because he owns, I believe, a series of broadcast stations which that group, anyway, feels to be worse than average in terms of EEO and they question, therefore, the suitability of that person serving on the CPB Board.

These might be the kinds of things that you think Justice could look at?

Mr. POTTINGER. OK.

Mr. SHOOSHAN. Just a small thing, too. You noted in your testimony with regard to your own department's powers with regard to title VII that there were two decisions that have gone against you as to the patterns and practices question. Could you provide for us at some later point the citations to those decisions?

Mr. POTTINGER. Sure.

[See letter dated September 9, 1976, below.]

Mr. SHOOSHAN. One other thing, too. You cite in your statement, and I notice it is cited several other places in the statements of agencies, that we will be hearing following this, the case of *NAACP* v. *Federal Power Commission*, and you cite that in a positive reinforcing manner.

In other words—correct me if I am wrong—you suggest that that decision should be read in affirmance of regulatory agencies enforcing EEO standards and guidelines. Is that correct? Do you feel that is basically a positive decision?

Mr. POTTINGER. May I have a moment? I want to check with Frank Allen who is from our appellate section.

Mr. SHOOSAN. Yes.

Mr. POTTINGER. I think that it was not stated in my testimony but in a letter which we sent you, if we could pull that letter for just a moment.

Mr. SHOOSHAN. I think you are correct. That is in the letter you sent to Chairman Van Deerlin in response to written questions dated June 22, 1976.

Mr. Pottinger, maybe if I could help by sort of clarifying the thrust of my question.

Mr. POTTINGER. Sure.

Mr. SHOOSHAN. The FCC in a recent rulemaking not appropriately before this committee today on EEO rules in the cable television area has put out for public comment the question of whether the FCC decision seriously impairs its ability to go forward in that area. What I am seeking from you is just a general statement as to whether you feel those kinds of concerns on the part of the FCC are justifiable.

Mr. POTTINGER. I think what I ought to do is back up, if I could supplement the record with that. I think it is a good question. It takes us afield a bit for the purpose for which we cited it. I see we cited it on an employment point and really cited footnote 7 as a minor point.

I think you have raised a new question. Rather than give you an answer now I had better look at it but I will give you a response.

[The following letter was received for the record:]

DEPARTMENT OF JUSTICE,
Washington, D.C., September 9, 1976.

HON. LIONEL VAN DEERLIN,
Chairman, Subcommittee on Communications,
House of Representatives,
Washington, D.C.

DEAR CHAIRMAN VAN DEERLIN: At the hearings of your subcommittee concerning non-discrimination in the public broadcasting industry held on August 9, 1976, there were two questions to which I was asked to respond by letter supplementing the record.

I was asked to supply the citations for the cases which built the authority of the Attorney General to file pattern or practice employment discrimination suits against state or local government agencies under Section 707. There are now three district court opinions to that effect. These are: *United States* v. *Pima County*

Community College District, 412 F. Supp. 392 (D. Ariz. 1976); *United States* v. *Fresno Unified School District*, 412 F. Supp. 392 (E.D. Calif. 1976); *United States* v. *City of Pompano Beach, et al.*, ——— F. Supp. ——— (S.D. Fla. July 8, 1976) Civil Action No. FL 76-0050-CIV-NCR. We have appealed the *Fresno* case.

I was also asked to furnish an opinion whether the recently decided case of *NAACP* v. *FPC*, Nos. 74-1608 and 74-1619, May 19, 1976, ——— U.S. ———, 96 S. Ct. 1806, impairs the ability of the Federal Communications Commission to regulate the employment practices of its licensees so as to prevent discrimination on the basis of race, color, religion or sex. The essence of the Supreme Court's holding in this case is that the statutory scheme defining the authority and responsibility of the Federal Power Commission authorizes it to prohibit unnecessary, illegal or duplicative costs of regulatees, including the costs of discriminatory employment practices, from being passed to consumers by regulatees of the Commission. The Court also held, however, that it is not the statutorily prescribed function of the FPC to assume primary responsibility for correcting all discriminatory employment practices of regulatees independent of the economic considerations which the enabling statutes mandate it to protect.

The Court made it clear that any regulation or practice of a regulatory agency is to be tested against the Congressional purposes reflected in the statutes which pertain to that agency. Slip Opinion, p. 7. Thus, the authority of different regulatory agencies to become involved with employment practices may differ. In this regard, the Court specifically distinguished the Federal Communications Commission from the Federal Power Commission in footnote 7, Slip Opinion, p. 8, and cited the FCC's employment regulations as being appropriate to its statutorily defined mission of insuring that programming fairly reflects the "tastes and viewpoints of minority groups."

So, while the *NAACP* v. *FPC* case does not specifically examine the regulatory practice of the FCC, it cannot be considered, in any way, authority for placing a general limitation on the FCC practice of regulating in an attempt to eliminate discriminatory employment practices. Whether any particular ruling or regulation exceeds their authority is a question which should be decided upon examination of the questioned provision and deciding whether it is "reasonably related to the purposes of the enabling legislation." *Mourning* v. *Family Publication Service*, 411 U.S. 356, 369 (1973). In examining such questions, the courts give some deference to the expertise of the agency promulgating the regulations. *Florida* v. *Mathews*, 526 F. 2d 319, 323 (5th Cir. 1976).

I hope this expression of opinion will be helpful to the subcommittee in examining the issues before it. If I can be of any further aid in this matter, I will be pleased to respond to any further inquiries of the subcommittee.

Sincerely,

J. STANLEY POTTINGER,
Assistant Attorney General, Civil Rights Division.

Mr. SHOOSHAN. All right. Thank you.

The last question I have, the FCC will appear here tomorrow and there has been some testimony earlier today by Mr. Loomis about what he feels to be inadequacies in the recent EEO rules adopted by the FCC. Has your office looked at those rules?

Mr. POTTINGER. Only in connection with the discussions that we had with CPB officials in 1974 and 1975. It seemed to me then—and I should stand corrected if this is a little too facile—but it seemed to me then that they were such broad rules that there was a tremendous amount of play within them. They were consistent with the FCC enabling statutes and, again, they don't want to get so specific that you begin regulating programing or first amendment rights and as a result of that, it seemed to me that their rules and regulations were immensely broad—broader than the problem was, unfortunately. That was an impression. It may not adequately characterize the problem.

Mr. SHOOSHAN. Some objective observes suggest that their recent rules are even broader. The point of the question was to refer to something that was discussed earlier and that is, Would it be helpful at all

in your dealings with this situation if all stations or at least all public broadcasting stations, were required to file with the Commission a written affirmative action plan? Would that be something that you would view as constructive?

Mr. POTTINGER. In terms of employment rather than programing, or both?

Mr. SHOOSHAN. In terms of employment.

Mr. POTTINGER. Employment. It might be. You always hate to ask for more paperwork knowing how everybody who gets Federal money is deluged with paper, but I do think that in line with what Mr. Loomis was saying about the need for collecting adequate data to know where the problems are that that sounds like a smart idea to me.

Mr. SHOOSHAN. The question also goes to the chairman's concern about the loopholes in existing law and the exemption for small stations. Is this one of those areas where those exemptions have produced inadequate information?

Mr. POTTINGER. I think that it is important to do that. Civil rights compliance people are always faced with a dilemma in this regard because it is unpopular and it is not a majoritarian oriented effort. People expect you to have very careful facts and good facts before you take a drastic move like cutting off funds and I think that is fair.

On the other hand, in order to have your facts, in order to know what is going on before you make an enforcement move, you have to obtain the facts and that means asking for lots of information and people don't like that either. We are always in this dilemma where people say on the one hand you don't have the facts, you are acting premautrely, and on the other hand you are demanding too much.

We try to stear some reasonable, sensible course and it seems to me that getting a basic profile of what the employment figures are of a broadcaster is fair and not difficult, not overly burdensome, and an affirmative action plan that was also clear and modeled on others that exist would probably be smart, too.

Mr. SHOOSHAN. Your response suggests one last question and that is, You said that in light of the recent language at least in the conference report on the public broadcasting authorization of 1975 that a vaccum of enforcement may now exist. Do you read your general authority or your delegated responsibility under the terms of the Executive Order 11764 as being broad enough to enable the Justice Department now to move in and do something to fill this vacuum with regard to title VI?

Mr. POTTINGER. Well, yes, I think the Executive order does cover title VI as it applies to these funds. What that means is that the Executive order has authorized the Attorney General to coordinate enforcement rather than move in and take it over. That means that we will have a responsibility for insuring that all title VI money is subject to a program by an agency, not by us but by one who does have jurisdiction that does include these funds, yes.

Mr. SHOOSHAN. Thank you.

Thank you, Mr. Chairman.

Mr. VAN DEERLIN. Mr. Coleman.

Mr. COLEMAN. No questions. He only has 15 minutes.

Mr. POTTINGER. I am all right.

Mr. VAN DEERLIN. I think we did meet your scheduling needs, Mr. Pottinger. Thank you very much.

Our next witness is Mr. Lawrence K. Grossman, president, Public Broadcasting Service.

STATEMENT OF LAWRENCE K. GROSSMAN, PRESIDENT, PUBLIC BROADCASTING SERVICE

Mr. GROSSMAN. Thank you, Mr. Chairman.

I am always glad to make way for the Department of Justice, as long as they stay away from our program schedule.

I appreciate the opportunity, Mr. Chairman, to testify here before you on the matter of equal opportunities and public broadcasting.

If I may preface my statement with a personal comment, the matter of equal opportunities has been a long-term personal goal and commitment with me. I think it is a matter of first priority with us and I am proud to be able to say that the very first memorandum that I sent to the PBS staff as the new president of PBS consisted of the PBS affirmative action plan and its equal employment opportunity program and responsibilities.

With your permission, Mr. Chairman, rather than read my full statement I would submit it for the record [see p. 88] and very briefly summarize some of the highlights of it.

First, PBS is, of course, a membership organization of the public television stations which themselves are independent and autonomous. We made a study of PBS and of all of our public television station records in equal opportunity. This study contains figures up to June 30 of this year. Those figures indicate very substantial and dramatic improvement throughout the industry on every level across-the-board at the stations and at PBS. Those statistics are supplied as part of my formal testimony which I have submitted for the record. They show very substantial improvements and I am very glad to be able to report those.

In addition, we feel very strongly that we cannot just rely on the statistics that we provide, but we have an obligation as a membership organization to participate with other national organizations and the Corporation for Public Broadcasting to undertake major affirmative actions.

So, together with the Corporation for Public Broadcasting and National Public Radio and National Association of Educational Broadcasters, PBS is in the middle of a very substantial program involving training, upgrading skills, and job placements.

This is a multimillion-dollar project for which we are developing full plans, which we have already well underway, and for which we are seeking funding.

The basic issue here seems to be the question of whether CPB should be the enforcer in this matter of equal opportunity in public broadcasting.

As the legal brief [see p. 97] that accompanies my testimony indicates, there are already eight levels of enforcement in this matter. The issue is not should the public television stations be involved with equal

opportunity or pay attention to the requirements of the law, the only issue is who should do the enforcing in that area.

As my colleague, Mr. Loomis, has already testified, CPB is a private agency, and is involved here in a very delicate balance of freedom and public television. That balance was already sorely tried and tested once before and we would hate to see that happen to us again. CPB itself now has the mechanism to satisfy the requirements of the Stokes amendment. They require, as has been testified to already, certification on the part of all of CPB's grantees, of compliance with equal opportunity requirements.

The PBS Board itself feels so strongly about this matter of the question of whether CPB should be an enforcer in this [illegible] that it passed and asked to have submitted for the record and with your permission, Mr. Chairman, I would like to submit for the record the resolution of the CPB Board [see p. 137]. If I may just read the two operative paragraphs:

> Now therefore be it resolved that PBS fully encourages the appropriate governmental agencies to vigorously enforce the civil rights laws.
>
> Be it further resolved that PBS fully endorses CPB's position that it would be inconsistent with CPB's role as a non-Federal corporation and it would be inconsistent with Section 396(g)(1)(d) of the Public Broadcasting Act for CPB to be placed in an enforcement position with respect to the civil rights laws.

That resolution was adopted unanimously by the PBS Board's Executive Committee.

It seems to me that the simple point comes down to this. If the Federal agencies that are charged with the responsibilities to do their job, along with congressional oversight such as your subcommittee is providing, I guarantee that the job will get done.

On a simple human basis, one letter from the FCC, from HEW, from EEOC or, heaven forbid, from the Justice Department, to any station causes enormous waves and great consequences.

I can tell you from personal experience that one of the key members of the PBS Board of Managers did not show up at a very important meeting of our Board. The reason he gave for not being there was that he was having a visit from two members of HEW who were simply traveling to his station in his area, and he said he just would not be absent from his station at such a critical time.

These agencies have enormous influence on our stations. If they did their job in this area, our stations would certainly respond to what they do.

Most of the public television licensees are State or local school board licensees, or licensed to Boards of Regents of State universities. Some of our stations have very little or no control over their own boards. In fact, the board of the station in San Diego to which you referred earlier is appointed by the Governor because it is associated with the State university. Most of our stations are subject to State and local civil service systems in the seniority requirements that they have.

Ours is a small industry, less than 8,000 employees, in total. Some of those stations, I believe that were cited by Congressman Stokes, do not have any minority employees represented at transmitters, because these in effect are stations that have no production facilities of their own and may have none or just one transmitter employee who main-

tains a transmitter as programing is being sent out from the State network headquarters.

So we are talking about a small industry, and, despite that fact, we have seen very substantial and continuing and dedicated improvement in the area of equal opportunity. That is true certainly of PBS as well, which is ahead of its affirmative action plan timetable.

I guarantee you we shall continue to reach our goal and do the job.

So in sum, if the Federal agencies with your prodding do their job in this area, then the job will get done in public broadcasting and no mistake can be made about that.

Thank you, Mr. Chairman.

[Testimony resumes on p. 138.]

[Mr. Grossman's prepared statement and attachments follow:]

STATEMENT OF LAWRENCE K. GROSSMAN, PRESIDENT, PUBLIC BROADCASTING SERVICE, BEFORE THE HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE, SUBCOMMITTEE ON COMMUNICATIONS

August 9 & 10, 1976

The question before this Committee is how shall equal opportunity in public broadcasting be assured.

The Public Broadcasting Service, representing 153 member public television licensees of 266 public television stations across the country, has made an unqualified and continuing commitment to equal opportunity. We believe our record of progress in assuring equal employment opportunity and making the enjoyment of the benefits of our program services available to all of the people bears us out.

We believe the key to ensuring that public broadcasting will be of service to all of the people is full and continuing equal employment opportunities. Like all of broadcasting in the United States, public television is a system in which program judgments and editorial decisions reside with independent local licensees operating under the protection of the First Amendment with the attendant responsibility of serving the public interest. The best and indeed the only solid and long-lasting way to build local and national program services that reflect the full diversity of American life--with regard to race, color, ethnic background, age, sex, religion, and communities of interest as well--is to assure that the creative, professional, and support positions at all our independent stations and related entities are open to all qualified applicants. We believe that employment in public television is

open to all. Furthermore, we accept the affirmative obligation to seek out minority and women applicants and to help them, where necessary, become qualified for the positions that are available.

The record of public television in these regards is not perfect. The effects of long years of past discrimination in American society generally are not easily eradicated, and least of all in a relatively small industry of fewer than 8,000 full-time employees. But our record is one of steady progress. It improves each year. And we are determined that this progress will continue--particularly as we expand and develop comprehensive programs of recruitment and career development that will reach out to all those who are currently underrepresented in public broadcasting.

Existing Laws and Regulations

We accept the fact that commitments are not enough. They must be encouraged and enforced. As the attached memorandum shows, no fewer than eight layers of laws, rules and regulation already exist--all of them with appropriate agencies of enforcement--to ensure equal opportunity for women and minorities in public broadcasting. PBS strongly urges the responsible federal, state and local agencies to carry out their responsibilities vigorously and even-handedly.

Even beyond the many layers of regulation and enforcement described in the attached memorandum, there is another and most important monitor of the conduct of public television stations--

and that, of course, is the Congress. Congressional oversight is and ought to be close and continuing. Public television is always prepared to submit its equal opportunity policies and practices to such public scrutiny. We particularly welcome the effort of this Committee to clarify and, we hope, to rationalize the overlapping and often competing roles of a multiplicity of enforcement agencies.

Role of the Corporation for Public Broadcasting

The Corporation's role in the structure of public broadcasting is a particularly sensitive one. The Public Broadcasting Act of 1967 authorized the creation of a private and explicity nongovernmental entity to assist in the development of strong and independent noncommercial radio and television stations, locally based and dedicated to educational service in the broadest sense of that word. CPB was and is expressly charged to assure "maximum freedom" for public stations from any and all external "interference" or "control"-- including interference or control from CPB.

The basic structure of public broadcasting involves a delicate balance between the strengthening of the system through substantial federal assistance which CPB receives and in turn channels to the stations and the insulation of the system from government interference with or control over programming, which insulation CPB is intended to provide. This is no easy balance to maintain. It requires trust, confidence, and a genuine

sense of partnership among the licensees, their representative national organizations, and the Corporation.

With of CPB's principal roles--to assist and to insulate--would necessarily be jeopardized by CPB's assumption of the role of enforcer. We believe such a role would inevitably distort the fundamental principle of decentralization and independence that is embodied in the Public Broadcasting Act. This has always been CPB's own view, and we on behalf of the public television licensees strongly endorse this view.

Indeed, our analysis of the recent amendment to the Public Broadcasting Appropriations Bill offered by Congressman Stokes and passed by the House and its legislative history confirms this view. As more fully described in the attached memorandum, this amendment does not place CPB in an enforcement role--and it should not; instead, it admonishes CPB to be constantly aware of the civil rights laws and to be prepared to take the necessary steps where its grantees are found by appropriate agencies to be in violation of the laws. CPB already has in place the mechanism to satisfy the obligations placed upon it by the Stokes Amendment. The government has in place the laws, rules and regulation, which, if enforced by existing federal, state, and local agencies, are fully designed to achieve the objective we all seek. That objective--assuring equal opportunity for women and minorities in public broadcasting--is in fact being accomplished. Public television submits its own record as case in point.

Public Television Stations as Equal Opportunity Employers

As the attached analyses of station and PBS employment show, our record is one of steady and continuing progress. It is not perfect. But every trend is in the right direction.

Of the 7,560 full-time employees of public television stations (as of December 31, 1975), 32.5% are women and 12.2% members of minority groups. Minority and female employment in public television has been increasing, not just in actual numbers of employees, but significantly more rapdily than overall employment in the industry. In the four years beginning in 1972, the percentage of women has increased from 27.5% to 32.5% and the percentage of minorities has grown from 9.6% to 12.2%. Our analyses show that overall minority employment in public television is greater than minorities' share of the adjusted national workforce (12.2% against 11%); and, although the employment of women still lags in comparison to their share of the adjusted national workforce (32.5% against 41%), the rate of change is extremely positive, particularly in the management and technical job categories.

It is important to note that we are dealing here with a relatively small industry--only 7,560 employees overall. This is an average of fewer than 50 full-time employees per public television licensee (and many of them have much smaller full-time staffs). Particularly in top management, turnover is slow; it is difficult to eradicate the accumulated effects of past discrimination in American society generally in just this one enterprise in just a few years time.

PBS does not control employment practices at the 153 autonomous station licensees. It is also important to note that more than half of all public television licensees operate within the confines of state and local civil service systems in which, as a general rule, seniority is given precedence. This is another reason why rapid change is very difficult.

Employment at the Public Broadcasting Service

PBS adopted a new five-year affirmative action plan at the beginning of this year. It is based on a comprehensive analysis of all PBS jobs, in parallel with the appropriate statistics for the availability of women and minority-group members in the workforce. We have established goals and timetables for achieving parity (or better) within the next five years.

The first target-date for measuring progress was set at the 18-month mark, June 1977. Within the first six months (as of June 30, 1976), we were well ahead of schedule in most job categories. Some 1977 targets have already been met and most are in reach.

As is the case with public television stations generally, we are dealing here with essentially a very small organization--only 204 full-time employees--in which just one or two numerical losses or gains are mangified in percentage terms. What is important, as the attached table shows, is that the PBS staff profile is moving very close to a literal reflection of "availabilities" in the appropriate workforce. Well within

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the five years of our new affirmative action plan, we are determined that every goal will be reached and exceeded.

Career Training and Development

As noted at the outset, it is not enough for public television simply to open its doors and wait for applicants. We accept the affirmative obligation to go out and seek applicants, and to offer a variety of career training and development opportunities to qualify them for jobs at the stations from bottom to top levels.

Scores of public television stations have run training programs over the years--some 78 of them in conjunction with degree-granting colleges and universities--and the Corporation for Public Broadcasting has already committed nearly $1.5 million to its training grants for women and minorities. One problem has always been the fragmentation and duplication of these programs, and the absence of an industrywide job placement and counseling component. Another problem has been lack of dollars. In conjunction with the Corporation and with our partners in the public broadcasting community (the National Association of Educational Broadcasters, National Public Radio, and the Association of Public Radio Stations), we are embarked on a comprehensive effort to tackle and solve both problems.

Within the next six weeks, we will have shaped a many-sided and comprehensive career training program--and we have already received indications that appropriate federal agencies

(such as the Manpower Training office at the Labor Department) will be receptive to grant proposals for funding to supplement what we are able to commit. The components of the program will include the following:

(1) In-Service Training Grants to assist working professionals with a wide range of short-term internships, station exchanges, education assistance grants, and community education outreach programs. CPB has indicated that it will initiate this program during the coming fiscal year.

(2) Expanded Minority and Women's Traning Program, which would be a large-scale variation of CPB's on-going program; at present, about 60 individuals per year receive training grants on a matching basis with the stations. An additional commitment of about $500,000 per year from outside sources would significantly increase the size of the program.

(3) Engineering Training for Television and Radio, which would be flexibly designed to serve the needs of individual stations and personnel and might include both in-service and external training. PBS estimates that about 50 such tailored training efforts would cost about $750,000 annually; public radio is designing a parallel program for its stations.

(4) National Job Placement Service, which would expand on the present placement service and open it to all applicants for jobs in public broadcasting. This would become a truly nationwide job bank, matching applicants and trainees with

available job opportunities throughout the television and radio system.

These are the outlines of the comprehensive training program we contemplate. PBS' goal is to have all components in place, and in operation, before the end of 1976. We have begun with an analysis of our needs--and the needs of women and minorities--and we commit ourselves to accumulating the required funds; the program will not be limited by the funds readily at hand. As the entire program moves into nigh gear, it promises to maintain the progress in equal opportunity that public broadcasting has accomplished in the last few years.

That, to repeat, is our commitment. It is unqualified and continuing. Public television makes that commitment to the Congress and to the American people.

August 9, 1976

PUBLIC BROADCASTING SERVICE

Memorandum: Regulation of Equal Opportunity in Public Broadcasting

A. Introduction

The purpose of this Memorandum is to examine the scope and intent of the Amendment to H.R. 14232, the bill providing a three year appropriation for the Corporation for Public Broadcasting (CPB), which relates to equal opportunity in programs or activities receiving assistance from CPB. The Memorandum will attempt to place that provision in the context of the existing laws concerning equality of opportunity to which public televisions entities are subject and the existing structure of the public television system established by the Public Broadcasting Act of 1967.[1/] The provision provides that:

> None of the funds . . . [appropriated in this Act for the use of CPB] shall be available or used to aid or support any program or activity excluding from participation in, denying the benefits of, or discriminating against any person in the United States, on the basis of race, color, national origin, religion or sex.

The inclusion of this provision in CPB's appropriation bill marks the culmination of a series of efforts to formalize CPB's role in promoting and enhancing the opportunities for minorities and women in public broadcasting and to highlight the scope of the many layers of existing equal opportunity laws

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1/ Pub. L. No. 90-129, 81 Stat. 365, codified at 47 U.S.C. §§390-99 (1970).

applying to public broadcasting. As indicated more fully below, a review of that history, the context in which this provision was enacted, the basic structure of the public broadcasting system and the fundamental purpose and objective of the provision itself require that it be construed as precluding CPB from providing assistance to any program or activity currently discriminating on the basis of race, color, national origin, religion, or sex and with respect to which reasonable efforts to eliminate such discrimination are not being undertaken. While the provision permits CPB to require, as it presently does, that public television stations and others seeking assistance provide it with assurances that they are in compliance and will remain in compliance with laws respecting equal opportunity, it does not obligate or authorize CPB to enforce such laws or to monitor compliance with them. The imposition of such additional affirmative obligations is totally inconsistent with the manner in which the provision was enacted and with CPB's role in the public broadcasting system created under the Public Broadcasting Act of 1967.

However, before setting forth the considerations which require that conclusion, it is helpful to explore the elaborate framework within which the provision must ultimately fit: the structure of the equal opportunity laws to which public television entities are subject.

B. The Present Structure of Equal Opportunity Laws

Public television entities are subject to eight different layers of regulation designed to ensure that they do not discriminate or deny equal opportunities on the basis of race, color, national origin, sex or religion. Some of these regulations apply to all of the public broadcast entities, and others only to certain classes; some involve employment practices, some programming and some both; however, together they form a comprehensive body of rules and restrictions governing equal opportunity in public television. The various statutory provisions are set forth below. That discussion is not intended to provide a detailed analysis of each provision but rather to give a flavor of the extent and range of equal opportunity regulation which affects public television.

1. Title VII of the Civil Rights Act of 1964

Title VII of the Civil Rights Act of 1964 (Title VII) 1/ is the most comprehensive federal regulation concerning equal opportunity in employment, and many state and local statutes and ordinances as well as some other federal provisions are patterned after it. Title VII applies to any employer, whether private or governmental, which has fifteen or more employees and applies to public television stations, PBS, CPB and any other entity involved in public television.

Title VII prohibits all forms of discrimination or prejudice on the basis of race, color, religion, sex, or national origin in employment and employment practices. The prohibitions of Title VII extend to discriminatory conduct in recruitment,

1/ Pub. L. No. 88-352, Title VII, §701 et seq., 78 Stat. 253 et seq., codified at 42 U.S.C. §§2000e-2000e-17 (1970).

training, hiring, promotion, assignments, termination and receipt of the various perquisites and benefits associated with employment. Any categorization or classification of employees on such a basis is also outlawed as are advertisements for -- or advertisements excluding -- applicants identified by race, color, religion, sex or national origin. The enforcement of Title VII is committed primarily to the Equal Employment Opportunity Commission (EEOC) and it has adopted a variety of rules and regulations concerning employment and employment practices as well as guidelines designed to assure nondiscrimination in employment. While Title VII itself only prohibits discriminatory conduct, the EEOC actively encourages the adoption of affirmative action programs designed to realize the goal of equal opportunity for women and minorities.

Title VII is a particularly effective tool for ensuring that minorities, women and others protected by the provision are not subject to discrimination for it does not require a showing of discriminatory or prejudicial intent to create a presumption of discrimination. It is sufficient if the effect of an employment practice has a disproportionately adverse affect on the protected class -- e.g., women, minorities, etc. At that point, the burden is shifted to the employer to justify the adverse impact, and such justifications are difficult to establish since they must be closely tied to the performance of the job in question and admit of no other less discriminatory means of effectuation.

Under the statutory scheme, the EEOC is required to attempt to settle complaints through mediation and conciliation. If these efforts prove futile, it can institute an action against the employer in federal district court. However, in cases involving a state or local government, the Department of Justice, and not the EEOC, is authorized to bring suit for enforcement of Title VII. Many public television stations are licensed to those entities and thus subject to Justice Department enforcement. Similarly private suits may also be maintained by individual complainants.

The relief which may be obtained in such actions includes preferential hiring requirements and promotions, on-the-job training programs, elimination or fundamental alteration of employment tests, seniority systems and other employment practices, and the award of back pay and attorney fees. These last two features, coupled with the right to maintain such suits as class actions, significantly enhance the effectiveness of Title VII for they allow those otherwise without the resources or with claims that are monetarily too small to maintain enforcement actions. Recoveries in such cases have run into the hundreds of thousands of dollars with some awards amounting to millions of dollars.

These general prescriptions of Title VII are supplemented by the provisions of the Equal Pay Act of 1963[1/] and the Age Discrimination in Employment Act of 1967.[2/] The Equal Pay Act mandates equal compensation for employees of both sexes performing equivalent

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1/ Pub. L. No. 88-38, 77 Stat. 56, codified at 29 U.S.C. §206 (1970).
2/ Pub. L. No. 90-202, 81 Stat. 602, codified at 29 U.S.C. §§621-634 (1970).

work while the Age Discrimination Act prohibits discrimination based on age where the employee or applicant is between 40 and 65.

2. The Federal Communications Commission

All public television stations are licensed by the Federal Communications Commission (Commission) and are fully subject to its jurisdiction. The Commission's regulation of those licensees is comprehensive and extends not only to their technical operation but also to their employment and program practices. Starting in 1968, the Commission has assumed an increasingly vigorous role in the regulation of the employment practices of its licensees, including public television stations. In that year, it announced that the failure to adhere to the requirements of the equal opportunity laws could reflect on a broadcaster's qualifications to hold its license[1/] and in 1969, the Commission's adopted rules prohibiting licensees from discriminating on the basis of race, color, national origin, or religion.[2/] That prohibition was extended in 1971 to include discrimination on the basis of sex.[3/] Unlike Title VII, those rules require public television licensees to take affirmative action to insure the employment and advancement of minorities and women and this obligation is imposed without regard to whether the licensee has engaged in any discriminatory conduct in the past. Thus, all public television licensees are required "to establish, maintain, and carry out, a positive continuing program of specific practices designed to assure equal opportunity in every aspect in station employment and practice."[4/] The affirmative nature of that

1/ Nondiscrimination Employment Practices of Broadcast Licensees (NEPBL), 13 FCC 2d 766, 771, 773-75 (1968).
2/ NEPBL, 18 FCC 2d 240, 245 (1969).
3/ Equal Employment Program, 32 FCC 2d 708 (1971).
4/ NEPBL, supra note 6-2.

requirement was reaffirmed by the Commission in its recent Report and Order[1/] clarifying the obligations imposed by its equal opportunity rules and revising its procedures under those rules.

Pursuant to the Commission's rules, virtually every public television licensee must adopt and file with the Commission an affirmative action program dealing with recruitment, training, and promotion of Blacks, Women, Spanish-surnamed Americans, American Indians and Orientals. Licensees must communicate their nondiscrimination obligation to their employees and prospective employees through appropriate notices and other devices. Under the Commission's recent Report and Order, they also will be required to maintain systematic communication with a variety of minority and women's organizations to encourage the referral of qualified minority and female applicants, recruit from educational institutions with significant minority and/or women's enrollments, and utilize media with significant circulation among or of particular interest to minorities and women. Licensees are encouraged to provide on-the-job training to improve the skills of minority and female employees, to provide assistance to local school programs designed to enable minorities and women to compete for jobs, and to make special efforts to assure the promotion of minorities and women. Licensees are presently required to file annually a statistical analysis of the composition of their work force, and under the new Report and Order will be required to submit in connection with their renewal applications information regarding the available pool of minority and women applicants in the work force, an analysis of hiring and promotions for the year preceding the filing of the licensee's renewal application.

1/ Nondiscrimination Employment Practices of Broadcast Licensees, FCC 76-426, released July 26, 1976.

and an explanation of any disparity between the proportion of minority or female employees on a licensee's payroll and in the relevant work force. In addition, those public television stations which employ 50 or more individuals must submit a job structure analysis with their renewal application.

Enforcement of these regulations is accomplished primarily through the Commission's renewal process. When a licensee files its renewal application, the Commission reviews the employment performance of the station, either on its own motion or on the basis of a petition filed by a public interest group, to determine, among other things, whether the licensee is complying with the Commission's equal employment rules. If the Commission concludes, on the basis of its analysis of the station's statistical profile, the other information required by its equal opportunity rules and its review of the station's affirmative action program, that a licensee's performance is inconsistent with those rules or, while not inconsistent with those rules, could be improved, the Commission will impose certain reporting and other obligations which are designed to improve the employment of minorities and women. In particular cases, the Commission may require the licensee to establish goals and timetables, and its progress toward these goals will be reviewed. In other cases, where a licensee's employment profile is particularly poor or where past administrative sanctions have proved ineffectual, the Commission may designate the station's renewal application for a hearing to determine whether its grant would serve the public interest. The cost, time, and uncertainty generated by the designation of an application serves as a most effective means of assuring compliance with the Commission's rules.

In addition to its employment rules, the Commission also requires that all public television licensees serve the problems, needs, and concerns of every significant group and interest in its service area. The Commission has consistently construed this obligation to include the requirement that licensees serve the needs of minority groups and women. In order to assure that public television licensees are preserving those needs, they are obligated to ascertain the needs, problems and interests of their constituents on a continuing basis.[1/] While licensees are given, in view of First Amendment considerations, broad discretion in determining how to meet these needs and problems of the groups in its service area, the obligation to serve the needs and problems is clear and the failure to serve the needs of any significant group can result in a licensee's renewal application being designated for a hearing to determine whether its grant will serve the public interest. In 1972, the Commission designated the renewal application of the Alabama Educational Television Commission (AETC) on those grounds and, after hearing, the Commission concluded that the AETC had failed to serve the needs of the black residents of Alabama.[2/] The Commission thus denied AETC's renewal applications but also found that AETC's improvement in performance during the pendance of the hearing did not disqualify AETC from applying for its facilities anew. However, as a result of that action, AETC is now involved in a com-

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1/ Primer on Ascertainment of Community Problems, 30 FCC 2d 1136 (1971); Ascertainment of Community Problems by Broadcast Applicants, 57 FCC 2d 418 (1975).
2/ Alabama Educational Television Commission, 33 FCC 2d 495 (1972) and 50 FCC 2d 461 (1974).

parative hearing with another applicant to determine whether the public interest could be best served by the grant of AETC's or the other applicant's application for three of AETC's former facilities.[1/]

3. Title VI of the Civil Rights Act of 1964

Title VI of the Civil Rights Act of 1964[2/] prohibits entities which have received federal financial assistance from discriminating on the basis of race, color or national origin in connection with the project which received that assistance. Title IX of the Education Amendments of 1972[3/] extends that prohibition to discrimination on the basis of sex in educational projects receiving such assistance. The enforcement of these provisions is committed to the agency or department which administers the statute pursuant to which the assistance is provided.

Most public television stations have received financial assistance under the Educational Television Facilities Act of 1962[4/] or one of the amendments to that provision. The Facilities Act is administered by the Office of Education of the Department of Health, Education and Welfare (HEW) and that Office has taken the position that public television stations which have received assistance under the Facilities Act are subject to the provisions of Title VI and IX and to HEW's regulations[5/] implementing those provisions.

1/ Docket Nos. 20675-76, Alabama Citizens for Responsive Public Television, Inc., and Alabama Educational Television Commission, 41 Fed. Reg. 18915 (May 7, 1976).
2/ Pub. L. No. 88-352, Title VI, §§601-605, 78 Stat. 252, codified at 42 U.S.C. §§2000d-2000d-4 (1970).
3/ Pub. L. No. 92-318, Title IX, 86 Stat. 373, codified at 29 U.S.C. §§203(r)(1), (s)(4), 213(s), 42 U.S.C. §§2000c(b), 2000c-6(a)(2), 2000c-9, 2000h-2 (Supp. II 1972).
4/ Pub. L. No. 87-447, 76 Stat. 64, codified at 47 U.S.C. §§390-397 (1970).
5/ 45 C.F.R. Part 80 (1975).

Those regulations provide that no person shall, on the ground of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in connection with the activities for which financial assistance is provided. Applicants for assistance are required to provide assurances that they are in compliance with and will remain in compliance with this non-discrimination provision. The regulations set forth specific examples of conduct prohibited and give examples of the affirmative obligations which a recipient of assistance is expected to undertake. Public television licensees are required to provide HEW with assurances that they will give due consideration in their programming to the interests of all significant racial or ethnic groups within the population served by the station. In addition, these regulations prohibit employment discrimination in all projects if and to the extent such discrimination tends to exclude individuals from participation in, deny them the benefits of, or subject them to discrimination under any project subject to Title VI. HEW's enforcement actions with respect to public television indicate that it views public television as falling within the scope of that regulation. Thus, HEW views Title VI and Title IX as reaching both the employment and program activities of public television stations and giving HEW power to assure that public television licensees provide equal opportunity in both areas. The extent of HEW's powers with respect to program regulations are, of course, subject to First Amendment constraints.

HEW's enforcement powers are broad and a finding of noncompliance can result in the termination of assistance, a determination that a licensee is disqualified from receiving further assistance and

the requirement that the station repay the depreciated value of the equipment acquired with the Facilities funds. Since the Facilities Act was passed to enable public television stations to acquire the facilities those stations could not otherwise afford, these sanctions constitute a significant incentive to comply with the substantive provisions of Titles VI and IX. Before these sanctions may be imposed, however, HEW is required to attempt to seek voluntary compliance with the provision of these Acts.

4. Other Title VI and Title IX Applications

Neither Title VI or Title IX are limited to the Facilities Act. Title VI applies to all projects pursuant to which Federal Financial assistance is provided and Title IX applies to any educational project receiving Federal financial assistance. Public television stations receive federal assistance through several means, although the most notable are the National Endowment for the Arts (NEA), the National Endowment for the Humanities (NEH) [1/] and pursuant to Section 10 of the Emergency School Aid Act of 1972 (ESAA). [2/]

1/ Pursuant to the National Foundation on the Arts and Humanities Act of 1965, Pub. L. No. 89-209, 79 Stat. 845, as amended, codified at 20 U.S.C. §§784-786, 951-963 (1970).

2/ Pub. L. No. 92-318, Title VII, §§702-720, 86 Stat. 354-371, codified at 20 U.S.C. §§1601-1619 (Supp. II 1972). Additionally, some public television stations have received funds provided by the federal government through the revenue-sharing program. This program contains nondiscrimination provisons of its own. See the State and Local Fiscal Assistance Act of 1972, Pub. L. No. 92-512, 86 Stat. 919, codified at 26 U.S.C. §§ 60117A, 6687, 31 U.S.C. §§ 1221-1228, 1241-1243, 1261. These provisions prohibit discrimination on the grounds of race, color, national origin or sex in any program or activity funded in whole or in part by federal revenue sharing funds. Where funds are used for capital expenditures, the prohibitions extend to uses of items purchased. Enforcement is through the Treasury Department's Office of Revenue Sharing (ORS). ORS investigates complaints, attempts to negotiate a settlement, and, where a violation has been found, may terminate further funding. Also, ORS may refer matters to the Department of Justice to pursue judicial remedies.

This latter provision, designed to provide programming for minority children, is administered through the Office of Education of the Department of HEW and public television stations which have received funds under the program are subject to the Title VI and IX regulations outlined above with respect to the Facilities Act. Stations which have received grants from either NEA or NEH are subject to the Title VI regulations issued by the National Foundation on the Arts and Humanities,[1] the parent entity under which NEA and NEH operate. Those regulations track rather closely the regulations issued by HEW under Title VI and appear to have generally the same scope, with program regulations, of course, subject to First Amendment restraints. The NEA/NEH Title VI regulations, however, appear to afford greater recognition of First Amendment considerations relevant to governmental review or involvement in program content.

5. Government Contracts

In addition to the receipt of funds and grants noted above, many public television stations as well as CPB and PBS are parties to contracts with the government or are a part of a larger entity that has such a contract. In both cases, the existence of such a contract subjects those stations to the strictures of Executive Order No. 11246.[2] That Order prohibits government contractors from discriminating on the grounds of race, color, religion, sex or national origin. This prohibition extends to all phases of a contractor's operation, and requires contractors to undertake affirmative action to ensure that applicants are employed, and that employees are treated during employ-

1/ 45 C.F.R. Part 1110 (1975).
2/ Codified at 42 U.S.C.A. §2000e, note (1974).

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ment, without regard to their race, color, religion, sex or national origin. Extensive reporting requirements are also imposed on contractors subject to the Order.

The nondiscrimination requirements of the Order generally mirror Title VII although the affirmative action obligation represents a significant increase over the obligations of Title VII. Under the Order, and subsidiary implementing regulations issued by the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP),[1/] contractors are required to take specific actions directed to increasing minority and female participation generally and ensuring equal treatment in a number of employment practices including: promotion, demotion, transfer, training, termination or layoff, rates of pay and other forms of compensation, recruitment and recruitment advertising. Further, contractors with fifty or more employees and a contract of $50,000 or more must draw up affirmative action plans incorporating a "utilization analysis" and a program for achieving the appropriate employment levels.

Enforcement of the Order is the responsibility of the Department of Labor. Primary responsibility rests with the Office of Federal Contract Compliance Programs, although OFCCP has delegated responsibility to seventeen other federal agencies. Public broadcasting licensees are within the province of the General Services Administration (GSA) Office of Civil Rights and, if the licensee is a college or university, the HEW Office of Civil Rights. Review of contractors' compliance with the Order is undertaken both in response to complaints and on a routine, and random, basis.

1/ 41 C.F.R. Parts 60-20 and 60-50 (1975).

The enforcement steps include investigation, attempts at mediation and conciliation, issuance of a show cause order requiring the contractor's written response to a charge of violation and to a proposed sanction, and a formal administrative hearing. Complaints also may be referred to the EEOC for resolution through a similar process. The ultimate sanction for a violation of the Order is termination of the contract and disbarment of the contractor from further contracts.

6. Civil Rights Amendment and Laws

In addition to these more recent regulatory efforts designed to eradicate discrimination, all public broadcast licensees are subject to provisions of the Civil Rights Act of 1866[1/] and those public broadcast stations licensed to state or local government or instrumentalities are subject to the strictures of the Civil Rights Act of 1871[2/] and the Fourteenth Amendment.

The Civil Rights Act of 1866 guarantees to all persons the right, among others, to make and enforce contracts in the same manner as white persons. This provision, codified as 42 U.S.C. § 1981, has been construed to prohibit actions by both governmental and non-governmental entities which discriminate on the basis of race, alienage and national origin and encompass discriminatory employment practices. Section 1981 also enables those alleging violations of Title VII based on race to maintain private suits without first resorting to the EEOC.

Those public television licensees that are state or local governments, governmental agencies or instrumentalities are subject to the Fourteenth Amendment's equal protection clause

1/ Ch. 31, 14 Stat. 27, codified at 42 U.S.C. §1981 et seq. (1970).
2/ Ch. 99, 16 Stat. 433, codified at 42 U.S.C. §1983 et seq. (1970).

and the provisions of the Civil Rights Act of 1871 authorizing suit to enforce those rights as well as other federal provisions against discrimination. The Fourteenth Amendment outlaws any governmental discrimination not justified by valid substantial governmental concerns. Where discrimination is based on race or color, the governmental concern must be "compelling" to justify it and the means chosen to achieve the state's goal must be the means least restrictive of the rights of those persons against whome the discrimination runs. It is arguable that sex-based discriminations also must pass this stricter test. For public television, the Fourteenth Amendment's prohibition reaches all forms of discrimination in any other aspect of station operation.

Under the Civil Rights Act of 1871, 42 U.S.C. § 1983, suits may be maintained by private parties against any person acting under color of state or territorial law to enforce rights protected not only by the equal protection clause, but also by Title VI, Title VII and any other statutory provisions designed to prohibit discriminatory conduct. Such suits are, however, limited to actions against state officials or those acting under color of state law. Actions may be maintained for damages or equitable relief and may be brought individually or on behalf of a class. The relief available under these laws include requirements that an employee be hired, promoted or reinstated, awarded back pay or otherwise compensated or, subject to First Amendment limitations, that specified actions with respect to

programming be taken or compensation paid for past discriminatory programming.

7. State and Local Laws

In addition to the federal anti-discrimination and affirmative action requirements, nearly all the states 1/ and many localities have enacted legislation requiring nondiscrimination. These laws are principally concerned with employment discrimination, although some are phrased quite broadly to reach other discrimination and some require affirmative action. Enforcement generally is patterned after Title VII, utilizing a complaint-investigation-conciliation-administrative hearing process with court enforcement available as a final resort. The EEOC frequently relies on such state or local laws to achieve the objectives of Title VII.

8. Private Enforcement

In addition to the formidable array of federal, state and local statutes and ordinances concerning equal opportunity, public television entities are also subject to private regulatory activity designed to foster the same ends. Private entities making funds available to public television at times require recipients to adhere to equal opportunity rules and the Ford Foundation, the most notable and significant contributor to public television, has for many years required grantees to adopt and adhere to an affirmative action policy.

1/ A non-exhaustive review of applicable statutes reveals 47 states as well as the District of Columbia with anti-discrimination statutes.

The private equal opportunity effort established by CPB is a most important one. CPB's equal opportunity policy is applicable to all recipients of CPB assistance including PBS and all public television stations. Since CPB is a private entity, that policy rests on no firm statutory predicate, but it nonetheless serves as an effective device to ensure nondiscrimination by public television stations and others receiving assistance from CPB. Pursuant to that policy, public television stations are required to comply with all applicable laws prohibiting discrimination against any person on the basis of race, color, religion, national origin, age or sex. Stations are also required, as a condition of the receipt of community service grants,[1/] to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Under its policy, CPB does not attempt to investigate or enforce those anti-discrimination provisions -- although it will refer complaints to the appropriate agency -- but rather relies on the enforcement actions of the agency with jurisdiction to enforce the respective provision. Whenever a public television station has been found by a court or agency with jurisdiction to have violated any equal opportunity law, CPB may suspend or terminate assistance both in cash and in kind, although if the station appeals the decision, CPB will not terminate or suspend assistance in kind pending resolution of the appeal. Before CPB terminates or suspends such assistance, however, the public television station is given the opportunity to demonstrate that the violation has been fully corrected

1/ Pub. L. No. 94-192, 89 Stat. 1099, codified at 47 U.S.C. §§396-397 (Supp. V 1975).

or that it is in full compliance with all remedial provisions of such final determination. Stations found to be in violation of equal opportunity laws remain ineligible for CPB assistance until they can demonstrate to the corporation that the violation has been corrected or that it is in compliance with all remedial provisions of such adjudication.

The effectiveness of this policy as a deterrent to discriminatory conduct by public television stations and others subject to its provisions should not be minimized. The loss of community service grants and access to national programming produced or distributed with CPB funds would constitute a fundamental injury to virtually all public television stations. Those stations are highly dependent on the discretionary funds made available by the community service grants and on the national programming made available through CPB. Moreover, under the policy, stations may lose these vital aids if any equal opportunity law is violated, whether local, state or federal, and, unlike Title VI and IX which permit termination of financial assistance only with respect to specific projects as to which a violation has been found, this policy applies if there is noncompliance in any activity of a CPB recipient, regardless of whether or not such activity was aided by CPB support. In addition, this policy covers not only discrimination in employment but any form of discrimination. Thus, when the Commission concluded that AETC had failed to adequately serve the needs of blacks in the State of Alabama, CPB requested AETC to demonstrate why its assistance should not be terminated. Although

CPB ultimately did not terminate assistance, largely because of the FCC's further finding that AETC had corrected its past practices, the institution of the proceeding served notice of the scope and breadth of CPB's policy.

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This brief review of the present equal opportunity regulation to which public television is subject clearly establishes the comprehensive nature of that regulation. The layers of federal, state, local and private regulation cover virtually every aspect of equal opportunity in public television and ensure that, to the extent feasible, the activities of public television to achieve equal opportunity will be scrutinized, reviewed, investigated and reported. Indeed, at the federal level, public television is subject to equal opportunity review by up to nine separate agencies or departments. It is against this backdrop that the newest equal opportunity provision must be viewed.

C. The Meaning of the Amendment to CPB's Appropriation Bill

Notwithstanding this comprehensive and multi-faceted regulatory scheme to insure equal opportunity in all aspects of public television, several efforts have been made over the past three years to formalize CPB's role in promoting and enhancing opportunities in the industry. The passage of the Stokes Amendment to H.R. 14232 marks the realization of those efforts. In order to properly construe that provision, it is necessary to review that legislative history.

In 1973, two proposed amendments to CPB's authorization bill were introduced on the floor of the House. The first amendment would have prohibited the Corporation from rendering any financial or other assistance to any entity which did not establish that it was in compliance with all laws, rules or regulations designed to insure non-discrimination; the second would have had a similar limitation with respect only to laws prohibiting discrimination in employment. These amendments were not enacted into law on the grounds that they were unnecessary in light of existing equal opportunity laws and unwise in view of the structure of public broadcasting.[1/]

As this Committee is aware, that structure was carefully devised by Congress to facilitate the provision of financial assistance to public broadcasting so that the medium

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1/ See 119 Cong. Rec. H. 6441 (Remarks of Rep. MacDonald, July 20, 1973); 110 Cong. Rec. H. 6450 (Letter to Rep. Staggers from CPB, July 20, 1973).

could realize its potential for service to the American public while at the same time insulating the ultimate recipients of that assistance from untoward pressures arising from that funding. Congress also sought to minimize the prospect that the system would be perceived as a governmental propaganda organ, and to preserve the fundamental values reflected in the First Amendment. To those ends, Congress employed a new, bold and unique technique -- a private, non-governmental, and non-profit corporation which would serve as the mechanism through which federal financial assistance would be provided for programming and other activities of the then fledgling but potentially vital medium. Under that scheme, enacted into law in the Public Broadcasting Act of 1967, the corporation, CPB, is to serve as a buffer between the source of the system's funding and the recipients of those funds. It is to provide guidance and direction to the system and to aid, facilitate and assist the system in the achievement of the various goals Congress found to be vital to the realization of a public broadcasting system responsive to the needs of the public on both a local and national basis. However, in order to preserve the system's independence, CPB is also precluded from engaging in specific operational functions and the local stations are to be the bedrock and heart of the system. CPB is to maintain and preserve the autonomy and independence of those stations both from outside influences and, to the extent feasible, from its own operations.

Requiring CPB to assure that recipients of its funds were in compliance with the equal opportunity, as the 1973 amendments proposed, is fundamentally inconsistent with this structure. As indicated in CPB's letter to Congressman Staggers at the time those amendments were under consideration, imposing such an obligation on CPB would

> give CPB, which is a private corporation having no organizational relationship to the Federal government, a principal responsibility for enforcing equal opportunity laws . . . . the enforcement of Federal laws is not and should not be the function of CPB or any other private person. This is a governmental function which should be carried out by a duly constituted Federal government agency. CPB's congressional charge requires it to promote the development of noncommercial broadcasting and to foster diverse programming. CPB was not intended by Congress to be Federal policeman. 1/

The letter went on to point out that requiring CPB to assume that obligation would place "unprecedented obligations on CPB that no other non-governmental body has . . . ." Moreover, it would involve CPB in the operation of the local stations to a degree not envisioned by Congress when it passed the Public Broadcasting Act -- if not to a degree prohibited by the

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1/ See 119 Cong. Rec. H. 6450 (July 20, 1973).

provisions of §396(g)(1)(D) of that Act. In view of these considerations, the House rejected the amendment. 1/

In 1975, Congressman Stokes introduced an amendment to the Public Broadcasting Finance Act of 1975 which read as follows:

> The Corporation [for Public Broadcasting] shall be subject to the provisions of Title VI, VII and IX 2/ of the Civil Rights Act of 1964 in the same manner and to the same extent as federal departments and agencies. 3/

This amendment was designed, according to its sponsor, to impose upon CPB the obligation to enforce Title VI against public broadcasting stations, despite the fact that CPB's status as a private non-governmental entity precludes it from taking on an enforcement role. (CPB itself, of course, is subject to the substantive antidiscrimination provisions of the Title.) Notwithstanding this fundamental alteration of carefully conceived and structured statutory schemes, the amendment passed the House. 4/ It was deleted, however, in conference on

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1/ Id. at 6452.

2/ This was obviously intended to refer to Title IX of the Educational Amendments of 1972.

3/ 121 Cong. Rec. H. 10880 (Nov. 10, 1975).

4/ Id. at H. 10883.

the grounds that it did not provide any additional protection against discrimination while fundamentally inconsistent with the structure of the public broadcasting system.[1/] As noted in the letter from Robert Benjamin , Chairman of CPB's Board of Directors, to the late Congressman Macdonald,[2/] an assertion that the provision would correct a loophole in the existing law was incorrect. CPB is fully subject to Title VI and VII of the Civil Rights Act of 1964 as well as numerous other federal statutory and other provisions providing for equal opportunity, while the rest of the public broadcast community is subject to the broad panoply of equal opportunity laws set forth above. In addition, as Mr. Benjamin noted, the provisions would have made CPB "an enforcer of the law, a governmental agency for the purpose of eliminating unlawful discrimination among its grantees and contractors." The performance of that function would upset the delicate constitutional balance Congress struck in the Public Broadcasting Act between the First Amendment rights of the broadcaster and the provision of federal assistance to the public broadcasting system and would involve CPB, contrary to the manifest intent of the Public Broadcasting Act of 1967, in the operation of the local broadcast stations.

With the deletion of the provisions from the authorization bill, efforts were focused this session on CPB's appropriation bill. That bill was reported out of the House

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1/ See H. Rep. 94-713, 94th Cong. 1st Sess. 7 (1975).
2/ Letter from Robert S. Benjamin, Chairman, Corporation for Public Broadcasting, to the Honorable Torbert H. Macdonald, Chairman, Subcommittee on Communications and Power, House Committee on Interstate and Foreign Commerce, dated November 17, 1975.

Appropriations Committee with language requiring that the funds appropriated were to be available "in accordance with the provisions of Title VI and VII of the Civil Rights Act of 1964 (Public Law 88-352) and Title IX of the Education Amendments of 1972 (Public Law 92-318) . . . ." When the bill reached the floor, Congressman Van Deerlin raised a point of order that the language in question constituted general legislation in an appropriation measure contrary to the House rules. Congressman Van Deerlin advanced the following reasons in support of that objection:

> First, the question of the applicability of these provisions to the Corporation for Public Broadcasting has not been resolved by the Commerce Committee. Hearings have been scheduled for August 9 and 10 to consider the very issue addressed by the language.
>
> Second, the language is ambiguous and has never been the subject of hearings. A similar amendment was dropped from the Public Broadcasting Finance Act of 1975 by the conferees so that the question could be examined in hearings.
>
> Third, the language on its face would force CPB to adopt regulations and insure compliance in the same manner as Federal departments and agencies. This changes the intent of Congress expressed in the Public Broadcasting Act of 1967 which states that CPB is "not an agency or establishment of the United States Government." If such a change is to be made, it is within the province of the Commerce Committee to decide.
>
> Fourth, even narrowly construed, the language would change existing law by making the provisions of Section 602 of Title VI applicable to CPB and by and by applying Title IX directly to CPB. 1/

1/ 122 Cong. Rec. H. 6651 (Remarks of Rep. Van Deerlin, June 24, 1976).

The Chair sustained the point of order on the grounds that the language would impose new obligations on CPB and thus constitute general legislation in the Appropriations Bill.

With the sustaining of the point of order, Congressman Stokes introduced as an amendment the provision which, after addition of religion to the proscribed discriminations, is under consideration here.[1/] The floor debate concerning that amendment makes it clear that the language was designed to meet the objection on which the point of order was based and thus was not intended to impose any new obligation on CPB. Congressman Stokes stated that the amendment was designed to make clear that the provisions of Section 601 of Title VI of the Civil Rights Act of 1974 were to be made applicable to public broadcasting but that the enforcement provisions of Section 602 were not to be imposed.[2/]

This legislative history clearly establishes that those concerned with the provision believed that it was not subject to a point of order. Thus, it can not impose any new obligation on CPB or require it to assume any new function; rather, its role in the public broadcasting system remains unaltered by the provision. Accordingly, the provision can not be construed as imposing any enforcement obligations on CPB with respect to any equal opportunity law or obligating CPB to

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1/ See Id. at 6652-53.

2/ Id. at 6652.

actively investigate the activities of its grantees and contractors to assure that they are in compliance with such laws. The performance of those functions would significantly increase CPB's responsibilities and alter, for the reasons so persuasively advanced by CPB with respect to the earlier attempt to modify its authorization bills, the fundamental role and function of CPB in the structure of public broadcasting.

In view of these constraints, PBS submits that the provision can only be construed as a limitation on CPB's provision of assistance to a project or activity where the recipient is found by a governmental body to be administering the project in a discriminatory manner and is not undertaking reasonable efforts to eradicate that discrimination. Under such a construction, CPB would not be involved in the enforcement or investigation of compliance with equal opportunity laws. CPB could, of course, require as it presently does, that applicants for assistance provide it with assurances that they are in compliance with equal opportunity laws and notify it if they are found to be in violation of such laws. But it would not undertake the governmental function of enforcement or involve itself in the internal affairs of its contractors or grantees.

Further, a finding of discrimination by an agency or court with jurisdiction to enforce such a provision would

not automatically require CPB to terminate assistance; rather, it would have the power to consider the nature of the discriminatory conduct and the effort undertaken to eradicate the discrimination. Grant of this discretionary power to CPB is essential if the provision is to comport with the basic purpose and objective of the civil rights titles echoed in the provision itself, which promote remedial activities by offenders, rather than termination of potentially beneficial projects and reserve the ultimate punishment for the recalcitrant. This approach is consistently employed by Congress in connection with the numerous statutory provisions designed to promote equal opportunity, and the Stokes Amendment should not be construed as an exception.

Finally, this construction of the Stokes Amendment would not require any alteration or change in the structure of the public broadcasting system. CPB presently requires all applicants for assistance, and thus all public television entities including the local stations and PBS, to provide it with assurances that they are in compliance with all equal opportunity laws and will remain in compliance with those laws. All grants of assistance are subject to CPB's Equal Opportunity Policy which authorizes CPB to terminate assistance when a grantee or contractor is found to violate any law respecting equal

opportunity. This provision would thus provide a statutory underpinning for this previously unsupported policy and would constitute a requirement that CPB recognize, facilitate and promote the national commitment, founded in the Fourteenth Amendment, to eliminate all forms of prejudice and discrimination and to eradicate all vestiges of any such past practices. In addition, the provision serves as an encouragement to CPB to continue with its present efforts to promote equal opportunity for minorities and women in all aspects of public broadcasting and as an admonition to be mindful of the need to foster, aid, encourage and initiate efforts within the public broadcasting community to realize full equality of opportunity for minorities, women and others disadvantaged, disenfranchised or otherwise subject to discrimination and neglect.

D. The Need for Further Legislation

Given this construction of the Stokes Amendment, the question remains whether additional legislation is needed to ensure equal opportunity in public broadcasting. PBS submits that it is not and that adoption of any such regulation may well imperil the delicate and carefully carved structure of the public broadcasting system. The brief outline of the sizeable array of equal opportunity laws to which public television is subject establishes the existence of a comprehensive and pervasive

regulatory scheme designed to insure that objective. The grant to existing regulatory agencies of specific powers with respect to public broadcasting would not enhance the authority of those agencies and may jeopardize the delicate constitutional balance reflected in the Public Broadcasting Act and in the Communications Act concerning government control of the broadcast medium. Additional legislation affording CPB power to enforce equal opportunity provisions would be inconsistent with the substantive goals underlying the Public Broadcasting Act and the structural device employed in that Act to permit federal financial assistance to program activities in a manner consistent with First Amendment values.

Moreover, PBS questions whether requiring CPB to enforce equal opportunity laws or to implement the provisions of Title VI is likely to produce a more effective utilization of minorities and women or to provide more programming targeted to meet the needs of those groups. If the detailed, comprehensive and multi-faceted regulatory scheme which presently exists to insure equality of opportunity and which includes a stringent equal opportunity program by CPB, has failed to produce satisfactory results, adding yet another layer of regulation is not likely to produce any more positive results. Rather, it will only increase the reporting and notification requirements, worsen the bureaucracy surrounding equal opportunity, and divide further the responsibility for enforcement. Most important, it will detract from the public television system's primary

charge -- to provide high quality programs obtained from diverse sources yet responsive to the needs of the public in their particular localities and throughout the country.

Conclusion

Whatever the answer to problems in the area of equal opportunity, imposition of an additional regulation is a step not calculated to achieve the goals of equal opportunity accepted by all, but instead merely risks the loss to everyone of the benefits of a public broadcasting system so carefully fashioned and painstakingly preserved.

August 9, 1976

PUBLIC BROADCASTING SERVICE: Employment Analysis, 1974-1976

The data for PBS in the following table and charts are current through June 30, 1976. They are drawn from the last three years because data for prior years are not comparable: there has been a substantial reclassification of PBS jobs since 1973. The job categories used here are those used by the U.S. Equal Employment Opportunity Commission in its regulations.

In January of this year, PBS adopted a new five-year affirmative action plan based on a comprehensive study of job categories at PBS and a parallel analysis of the availability of women and members of minority groups in the Washington Metropolitan area for employment. PBS has established goals and timetables for achieving parity (or better) within the five-year period. The first target-date for measuring progress was set at the 18-month mark, June 1977.

--In the first six months, however, PBS was well ahead of schedule in virtually every job category: some 1977 targets have already been met and most are within reach.

--The one greatest shortfall has been in the "other minorities" categories (other than Black) for most jobs. This will have to be an area of most intensive effort.

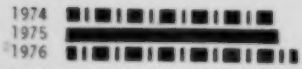
With reference to the table, from March 1975 to June 1976 the most significant gains in PBS employment have been recorded in the Officials and Managers category for women, in the Professionals category for both women and minorities, and in the Office and Clerical Workers category for minorities.

Because the PBS staff is small, the loss of just one or two women or minority-group members in a single job category can have profound statistical effects--which is what happened, for example, when PBS lost one female technician and two minority technicians (to the commercial sector) between 1974 and 1975. These losses are only now being reversed.

The table shows that, overall, the PBS staff profile is moving very close to a reflection of "availabilities" in the local workforce. Well within the five-year period of the new affirmative action plan, we are determined that these goals will be reached and probably exceeded.

PERCENT DISTRIBUTION OF FEMALE EMPLOYEES
OF PBS, 1974 - 1976*

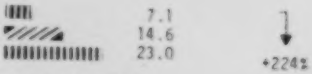
TOTAL:



	% FEMALE	RATE OF CHANGE IN % FEMALE 1974 - 76
1974	48.5	
1975	49.1	
1976	53.4	+10%

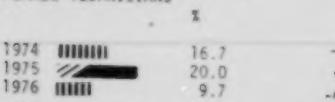
SUBTOTALS:

1. FEMALE OFFICIALS AND MANAGERS

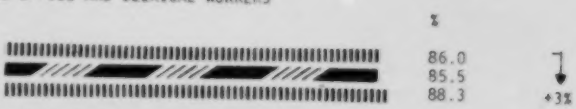


2. FEMALE PROFESSIONALS

3. FEMALE TECHNICIANS



4. FEMALE OFFICE AND CLERICAL WORKERS



5. FEMALE CRAFTSMEN/OPERATIVES

*1974 - '75 data collected as of March 31st of each year;
1976 data collected as of June 30th.

PERCENT DISTRIBUTION OF MINORITY EMPLOYEES
OF PBS, 1974 - 1976*

TOTAL:	% MINORITY	RATE OF CHANGE IN % MINORITY 1974 - 76
1974	18.8	
1975	20.0	
1976	27.7	+44%

SUBTOTALS:

1. MINORITY OFFICIALS AND MANAGERS

1974	0	
1975	4.2	
1976	3.8	+10%

2. MINORITY PROFESSIONALS

1974	8.0	
1975	7.5	
1976	23.2	+190%

3. MINORITY TECHNICIANS

1974	20.0	
1975	20.0	
1976	16.1	-20%

4. MINORITY OFFICE AND CLERICAL WORKERS

1974	28.0	
1975	35.5	
1976	51.7	+85%

5. MINORITY CRAFTSMEN/OPERATIVES

	%	
1974	80.0	
1975	80.0	
1976	80.0	0

*1974 - '75 data collected as of March 31st of each year;
1976 data collected as of June 30th.

PBS EMPLOYMENT ANALYSIS,
1974 - 1976

TOTAL	TOTAL # OF EMP	# FEMALE	% FEMALE	RATE OF CHANGE IN % FEMALE, 1974 - 76	# MINORITY	% MINORITY	RATE OF CHANGE IN % MINORITY, 1974 - 76
1974	138	67	48.5		26	18.8	
1975	175	86	49.1		35	20.0	
1976	204	109	53.4	+10%	55	27.0	+44%
OFFICIALS AND MANAGERS							
1974	28	2	7.1		0	0	
1975	48	7	14.6		2	4.2	
1976	52	12	23.0	+224%	2	3.8	+10%
PROFESSIONALS							
1974	25	16	64.0		2	8.0	
1975	40	20	50.0		3	7.5	
1976	56	38	67.9	+6%	13	23.2	+190%
TECHNICIANS							
1974	30	5	16.7		6	20.0	
1975	20	4	20.0		4	20.0	
1976	31	3	9.7	-42%	5	16.1	-20%
OFFICE AND CLERICAL WORKERS							
1974	50	43	86.0		14	28.0	
1975	62	53	85.5		22	35.5	
1976	60	53	88.3	+1%	31	51.7	+85%
CRAFTSMEN/OPERATIVES							
1974	5	1	20.0		4	80.0	
1975	5	2	40.0		4	80.0	
1976	5	3	60.0	+200%	4	80.0	0

August 9, 1976

PUBLIC BROADCASTING SERVICE

PUBLIC TELEVISION STATIONS: Employment Analysis, 1972-1975

The following table and charts show that the trend in the employment of women and minority-group members is solidly on the rise in the public television system nationwide. These are some highlights:

--the 12.2% minority employees is greater than this group's share of the adjusted national labor workforce (11%);

--the employment of women (32.5%) still lags in comparison to their share of the adjusted national workforce (41%) but the rate of change is extremely positive, particularly in the management and technical categories;

--combining the management and mid-management categories to ease comparison with national data shows public television employment of women (25.3%) exceeds the percentage of women in the managers and officials category of the adjusted national labor force (20%);

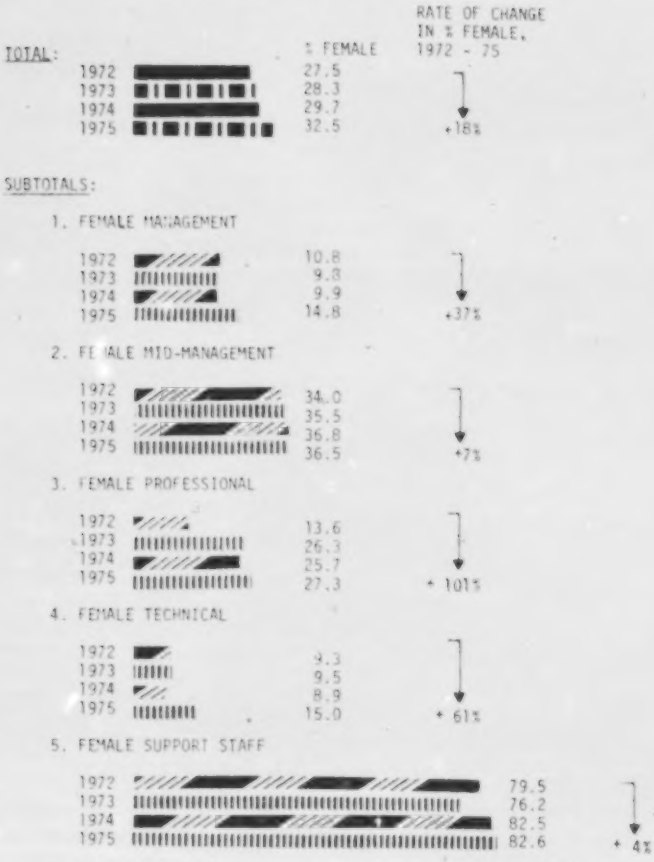
--minorities are still underrepresented in management and mid-management categories (5.2%), when combined and compared to the adjusted national labor force statistics (7%), but there has been very marked progress in the four years from 1972 to 1975.

It is important to note that we are dealing here with a relatively small universe--only 7,560 full-time employees overall. This is an average of fewer than 50 employees per public television licensee. Particularly in top management, turnover is slow; it is difficult to eradicate the effects of past discrimination in our society generally in just one industry and in just a few years. But progress has been steady, and it continues to be steady.

It is important to note also that about half of all public television licensees operate within the confines of state and local civil service systems in which seniority is given precedence. This is another reason why rapid change is difficult.

As the number of full-time trainees increases, greater numbers of qualified professionals--both women and minority-group members--will feed into the system. Many of them will (as has been our experience) continue to be drained off into the commercial sector. But many will remain in public television. And this, too, promises to help maintain the progress of the last four years.

PERCENT DISTRIBUTION OF FEMALE FULL-TIME EMPLOYEES
OF U.S. PUBLIC TELEVISION STATIONS, 1972 - 1975*



*1972 - '74 data collected as of June 30th of each year;
1975 data collected as of December 31st.

PERCENT DISTRIBUTION OF MINORITY FULL-TIME EMPLOYEES
OF U.S PUBLIC TELEVISION STATIONS, 1972 - 1975*

TOTAL:

	% MINORITY	RATE OF CHANGE IN % MINORITY, 1972 - 75
1972	9.6	
1973	10.0	
1974	11.2	
1975	12.2	+ 27%

SUBTOTALS:

1. MINORITY MANAGEMENT

1972	1.9	
1973	2.1	
1974	2.7	
1975	3.3	+ 74%

2. MINORITY MID-MANAGEMENT

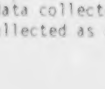
1972	4.9	
1973	5.6	
1974	6.4	
1975	7.2	+ 47%

3. MINORITY PROFESSIONAL

1972	8.5	
1973	9.4	
1974	10.3	
1975	10.5	+ 24%

4. MINORITY TECHNICAL

1972	9.9	
1973	10.3	
1974	10.4	
1975	12.0	+ 21%



5. MINORITY SUPPORT STAFF

1972	17.9	
1973	18.8	
1974	22.3	
1975	22.6	+ 26%

6. MINORITY TRAINEES

1972	-	
1973	-	
1974	-	
1975	37.9	

*1972 - '74 data collected as of June 30th of each year;
1975 data collected as of December 31st.

FULL-TIME EMPLOYEES OF
U.S. PUBLIC TELEVISION STATIONS, 1972 - 1975

TOTAL	# OF EMP.	% FEMALE	% CHANGE '72-'75	% MINORITY	RATE OF CHANGE IN % MINORITY, 1972 - 75
1972	5,734	27.5		9.6	
1973	6,132	28.3		10.0	
1974	6,763	29.7		11.2	
1975	7,560	32.5	+18%	12.2	+27%
MANAGEMENT					
1972	620	10.8		1.9	
1973	672	9.8		2.1	
1974	701	9.9		2.7	
1975	799	14.8	+37%	3.3	+74%
MID-MANAGEMENT					
1972	75?	34.0		4.9	
1973	715	35.5		5.6	
1974	749	36.8		6.4	
1975	750	36.5	+ 7%	7.2	+47%
PROFESSIONAL					
1972	1,186	13.6		8.5	
1973	1,756	26.3		9.4	
1974	2,008	25.7		10.3	
1975	2,360	27.3	+101%	10.5	+24%
TECHNICAL					
1972	2,037	9.3		9.9	
1973	1,979	9.5		10.3	
1974	2,141	8.9		10.4	
1975	2,295	15.0	+61%	12.0	+21%
SUPPORT STAFF					
1972	1,134	79.5		17.9	
1973	1,010	76.2		18.8	
1974	1,164	82.5		22.3	
1975	1,261	82.6	+ 5%	22.6	+26%
TRAINEE					
1972 -					
1973 -					
1974 -					
1975 -	95	37.9		37.9	

August 6, 1976

PUBLIC BROADCASTING SERVICE

RESOLUTION ON
EQUAL OPPORTUNITY IN PUBLIC BROADCASTING

WHEREAS, the Executive Committee of the PBS Board has received a report concerning the civil rights amendments to the public broadcasting appropriations bill;

WHEREAS, the Committee recognizes that the issue of CPB's role as an "enforcer" has been the subject of considerable discussion in the Congress and in the public broadcasting community;

WHEREAS, the Committee understands that the Subcommittee on Communications of the Committee on Interstate and Foreign Commerce of the House of Representatives has called hearings on August 9 and 10, 1976 to consider the issue of the enforcement of the civil rights laws by the various governmental agencies with jurisdiction over public broadcasting entities;

NOW, THEREFORE, BE IT RESOLVED that PBS fully encourages the appropriate governmental agencies to vigorously enforce the civil rights laws;

BE IT FURTHER RESOLVED that PBS fully endorses CPB's position that it would be inconsistent with CPB's role as a non-federal corporation and it would be inconsistent with Section 396(g)(1)(D) of the Public Broadcasting Act for CPB to be placed in an enforcement position with respect to the civil rights laws.

Adopted by the PBS Board
Committee for Minority and
Women's Affairs,
July 15, 1976
Adopted by the Executive
Committee of the PBS Boards
August 6, 1976

Mr. VAN DEERLIN. Thank you, Mr. Grossman.

Of the 25 persons who serve on the PBS Board of Governors, how many are women?

Mr. GROSSMAN. There are five women on the total Boards, three on the PBS Board of Governors, and there are two women on the Board of Managers. We have combined the figures for the PBS Board of Governors and the Board of Managers and that is the cause of my uncertainty.

Mr. VAN DEERLIN. Twenty five on each?

Mr. GROSSMAN. Twenty five on each Board, and five women in total.

Mr. VAN DEERLIN. What is the separate function of the two Boards?

Mr. GROSSMAN. The PBS Board of Governors consists of lay board members of the stations and they are elected by the stations and they constitute the Board of Governors of PBS which effectively controls the policy of PBS.

The PBS Board of Managers represents the professional station managers of the public television stations and the Board of Managers operates in an advisory capacity to the Board of Governors in determining policy.

Mr. VAN DEERLIN. One of them is a policy board and the other is an executing board.

Mr. GROSSMAN. Yes.

Mr. VAN DEERLIN. Let's take them one by one then. There are how many women on the Board of Governors? Three you say?

Mr. GROSSMAN. I believe there are three, Mr. Chairman, and I will have to confirm that figure.

Mr. VAN DEERLIN. How many of these women are also ethnic minority members?

Mr. GROSSMAN. None.

One of the Board members who is a woman is part American Indian, she has told us, Mrs. Cole, A Cherokee.

Mr. VAN DEERLIN. We frequently reach into part Indians to make up good statistics.

Mr. GROSSMAN. She has made that statement.

Mr. VAN DEERLIN. How many other minorities are represented besides women on the Board of Governors?

Mr. GROSSMAN. There is one black on the PBS Board of Governors who is the Chairman of our Finance Committee and there is one Mexican-American Spanish surname.

Mr. VAN DEERLIN. Now on the Board of Managers?

Mr. GROSSMAN. There are two women who are station managers who are on the Board of Managers.

Mr. VAN DEERLIN. And that is it?

Mr. GROSSMAN. There is no blacks, that is correct, or other minorities.

Mr. VAN DEERLIN. Has there been an effort to apply affirmative action to your own two boards or are you somewhat hemmed in by the fact that these are elected by member stations who are responsible to State governments and to educational institutions which are totally beyond your influence?

Mr. GROSSMAN. Well, the answer to that is yes on both counts. The nominating committee, however, of the boards at the last board meet-

ing—and that was the first board meeting at which I was present in my new capacity—made very strong representations about its concern in this area and it was clear that the board expressed its wish to that committee that in the search for candidates, as the terms expire, that this be a matter of first priority.

Mr. VAN DEERLIN. The Corporation for Public Broadcasting has noted its disagreement with the recent FCC action which seemed to relax its EEO enforcement rules. Now what is the position of PBS in this regard? Did you file comments at the time with the Commission?

Mr. GROSSMAN. No. PBS did not file comments with the Commission at the time. CPB did file comments. What I think we should be very clear about, I know the chairman understands, but for the record it is my understanding that the FCC report and order only relaxed its reporting requirements in terms of stations with 10 employees or less, but certainly did not relax its stand in terms of the requirements of those stations to operate under the equal opportunity standards that are set. It is just with regard to reporting requirements.

Mr. VAN DEERLIN. Yes, sir. I suppose it may have made it more difficult to identify and enforce.

Mr. GROSSMAN. That is certainly true.

Mr. VAN DEERLIN. First, I would like to ask you, as I wish to ask all the witnesses, about the response to this suggestion for an interagency task force that might deal with this problem and with some of the loopholes that have been revealed in the enforcement of the law.

Mr. GROSSMAN. Well, I certainly concur, Mr. Chairman, with Mr. Loomis' testimony in response to that question, which is that an interagency task force would be a very useful operation, because there are many layers here, and it would be good if they got together and did the job. But I would be very much opposed, and I think all of PBS would be very much opposed, to have CPB a part of that task force which should consist of Federal Government agencies but not CPB.

Certainly PBS, for that matter, would be very pleased to act as a resource to supply any information that would be required for such a task force.

Mr. VAN DEERLIN. I presume that you would have more than a raised eyebrow to offer to the suggestions that the law required the Justice Department or any other governmental oversight or programing responsibilities in the public broadcasting?

Mr. GROSSMAN. Yes, that would be a terrible thing to come to pass and it is a matter of great concern to all of us. I was glad to hear Mr. Pottinger express that same concern on the one hand. I was a little concerned about the other hand, however, in his testimony.

Mr. VAN DEERLIN. Mr. Shooshan.

Mr. SHOOSHAN. Thank you, Mr. Chairman.

To followup Mr. Van Deerlin's question about the task force, if one of the needs of this task force in terms of information gathering were to be identified as having on hand in a central spot the written affirmative action plans of the various stations, do you feel this is a role that PBS could fill?

In other words, collecting written affirmative action plans from all of its member stations regardless of size?

Mr. GROSSMAN. Well, my response to that would be, that if it were desirable to have such written affirmative action plans as it probably is and certainly well may be, that the FCC has one requirement—namely, 10 employees not to file—and for CPB come to the station with another requirement would just add a complex mess to what is already a complex situation.

My suggestion respectfully would be if the committee's judgment is that that is so, then have things filed consistently in one place and completely rather than have different groups require different filings from different stations. It is a matter of simplicity, not principle.

Mr. SHOOSHAN. So that you would support the recommendation by this committee that the FCC at least roll back its 10 or fewer exemption with regard to public broadcasting stations.

Mr. GROSSMAN. It certainly ought to receive serious consideration.

Mr. SHOOSHAN. In the employment analysis for public television stations which you have appended to your testimony today covering the years 1972 to 1975 you deal in terms of percentages; however, when you look behind those percentages there are some rather alarming figures regarding the nearly 800 management level personnel throughout the entire country of public television stations.

By my interpolations, figuring out the percentages you provided us with, only approximately 26 are members of minority groups. Can you really defend that record, Mr. Grossman?

Mr. GROSSMAN. It is not a record, as we have all acknowledged, to defend in the sense that we have a long way to go. There is no question about that. What I consider to be most significant, however, is the progress that has been made over the last 3 years and particularly the progress that has been made over the last year.

To be perfectly straightforward, there is no question that through the attention of this committee, if it came through to the attention of other Federal agencies, that progress would be continuing. There is no doubt about it but that this is a matter of first priority in public broadcasting and that progress is being made.

Mr. SHOOSHAN. You also said in response to some statements that Congressman Stokes had made at the outset of today's hearings that some of his figures were questionable because they may represent stations that were essentially rebroadcast stations and had no personnel on hand other than maybe one engineer or something.

It is my understanding that the National Black Media Coalition is about to release a study which goes to public television stations in the top 50 markets and in none of those instances probably do we have such a situation.

I understand eight stations to have terribly egregious problems in terms of EEO. I recall one station with no minority personnel at all. What specifically does PBS intend to do about those situations?

Mr. GROSSMAN. Well, I referred to that in my testimony. I think the most significant steps that we can take are the kinds of steps that we are taking; namely, to work with the stations in providing training programs, providing upgrading of skills programs, providing a national job clearance center, all of which we are doing at this point to make sure that the stations that are the most backward in this area come up to where they belong. Great attention is being given in terms

of the Board itself at PBS which has a Board committee devoted to minority and women's affairs.

As a matter of fact, the station manager of the Cleveland station is a member of that Board committee and is acutely conscious of that problem. He happens to be a woman and one of our best station managers.

I can give this committee assurances that the next time there are hearings of this kind that many of those situations will be substantially improved.

Mr. VAN DEERLIN. It would just seem offhand that Cleveland is one of the communities that should be thoroughly well represented with black employees and decisionmakers. It had no difficulty electing black public officials for some time.

Mr. SHOOSHAN. Thank you.

That is all, Mr. Chairman.

Mr. VAN DEERLIN. Mr. Coleman.

Mr. COLEMAN. Thank you, Mr. Chairman.

The physically handicapped persons of a minority group we have not addressed today. Can you tell me what PBS has been doing to train and recruit the physically handicapped?

Mr. GROSSMAN. The physically handicapped are a part of this program that I have been describing in terms of making available to them as this program is developing these various training programs and so on.

Of course, PBS itself particularly through, for example, the hearing impaired program that it has been putting on on a programmatic basis has been very much involved in that area.

Mr. COLEMAN. With what success have you met with the FCC and the provision for regular captioning for programs for the hearing impaired?

Mr. GROSSMAN. I am afraid we have met with very little success with the FCC. They have been sitting on our proposal for closed captioning. We have urged them together with Senator Percy in fact just 2 weeks ago, and Congressman Frey, to move ahead with that very critical project.

This refers to the closed captioning of programs so that hearing impaired audiences can enjoy the programs as well as the rest of us without any interference whatsoever for the rest of the audience.

There has been some opposition to that from the commercial broadcasters and from set makers but we have been pushing that and we are hopeful that the FCC will consider our application.

Mr. COLEMAN. What is the basis of the opposition?

Mr. GROSSMAN. It is hard to determine. Some of the opposition has addressed itself to the use of the special line that is being used, to a hope that we can wait to use that line that is in the television spectrum for other purposes, although I cannot think of a more essential purpose. It really is probably a matter of dollars. This will add some cost, although minimal cost, of closed-caption programing. It is considerably less than 1 percent of the average cost of each program to caption these programs and yet the advantages to hearing impaired persons are just incalculable.

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Currently the only aspect of television that hearing impaired people can enjoy as well as everyone else are the commercials; because the commercials make it very clear in the video as well as the audio what the message is, but the programs are very tough for them to handle.

Mr. COLEMAN. Thank you.

In your memorandum with regard to the Stokes amendment you mentioned that the FCC may designate a station's renewal application for a hearing and cost and certainly there would be a deterrent. How often has the FCC designated the station's renewal application based solely on the station's EEO practices?

Mr. GROSSMAN. Well, as I am sure you are aware, the only licensees that have been pulled in this area were pulled from the Alabama State network for that very reason. That had a very substantial effect on our entire industry and I would hope it had a very substantial effect on the whole broadcasting industry.

Mr. COLEMAN. I guess the point I am driving at is that it may be such a severe penalty to pay that it would be very seldom utilized.

Mr. GROSSMAN. Well, the point I was trying to make in response to that in my earlier testimony, Mr. Coleman, is that a mere letter of inquiry as the Commission has found grounds to do that would in itself be sufficient, I would suggest, to make sure that these stations shape up as they should, those that have not. And it would not be necessary to go the full route of this very serious pulling of their licenses.

Mr. COLEMAN. With respect to other enforcement mechanisms such as HEW's enforcement of title VI, how many times has HEW made the determination that a licensee is disqualified to receive further funding or have been required to repay the depreciated value?

Mr. GROSSMAN. I am not aware of any.

Mr. COLEMAN. Have there been any instances where other Federal assistance such as the National Endowment for the Arts or the National Endowment for the Humanities where the funding has been terminated?

Mr. GROSSMAN. I am not aware of any on that score either. Again, they all have jurisdiction and have the power to do that if that power would be exercised.

Mr. COLEMAN. That is all I have, Mr. Chairman. Thank you.

Mr. VAN DEERLIN. Thank you, Mr. Coleman.

Thank you, Mr. Grossman, for being with us this morning.

Mr. Martin Gerry, Director, Office for Civil Rights, Department of Health, Education, and Welfare.

We have got a quorum call. I will let you have your choice. Would you rather I came back or that we complete this now?

Mr. GERRY. I would appreciate that, if possible, Mr. Chairman.

Mr. VAN DEERLIN. All right. Then we will resume in 15 minutes.

[Whereupon, a short recess was taken.]

Mr. VAN DEERLIN. Mr. Gerry, you are accompanied by John Cameron, branch chief, broadcasting facilities program, Office of Education, Department of Health, Education, and Welfare.

Introduce your fellow witnesses if you will.

STATEMENT OF MARTIN H. GERRY, DIRECTOR, OFFICE FOR CIVIL RIGHTS, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, ACCOMPANIED BY RICHARD A. HASTINGS, DEPUTY ASSISTANT SECRETARY FOR LEGISLATION (EDUCATION), AND JOHN CAMERON, BRANCH CHIEF, EDUCATIONAL BROADCASTING FACILITIES PROGRAM, OFFICE OF EDUCATION

Mr. GERRY. Yes. On my left is Mr. Richard Hastings, the Deputy Assistant Secretary of Legislation and on my right Mr. John Cameron, the branch chief of the broadcasting facilities program, Office of Education.

Mr. Chairman, I appreciate the opportunity to testify before the subcommittee concerning the application of nondiscrimination in the broadcast industry.

The Department's Office for Civil Rights is responsible for enforcing a number of nondiscrimination statutes that apply to public broadcasters as well as other programs and activities receiving Federal financial assistance.

What I would like to do, Mr. Chairman, if I might is submit my statement for the record [see p. 146] and for a few moments simply make some additional points, some of the important aspects of that testimony, if that would be all right with the committee.

Mr. VAN DEERLIN. Absolutely.

Mr. GERRY. First, Mr. Chairman, let me add that, as was brought out in previous discussion, in addition to title VI of the Civil Rights Act and title IX of the education amendments which prohibit race discrimination and sex discrimination, Congress did pass in 1973 section 504 of the Rehabilitation Act which prohibits discrimination on the basis of physical or mental handicap by recipients of Federal financial assistance; so there is a nondiscrimination requirement in the law which would apply to all recipients' assistance from HEW in the same way that title VI, title VII, and title IX would apply.

In addition there is the provision of Executive Order 11246 which is the governmentwide contract compliance program operated by the Department of Labor which deals with the receipt of Federal contracts and there are some entities in the public broadcasting that do receive Federal contracts and as a result the provisions of Executive Order 11246 would apply to the employment activities of those contractors.

So there are actually four provisions with which HEW has some connection and which address the question of employment discrimination. The responsibility for the enforcement of Executive Order 11246 is delegated by the Department of Labor and is currently assigned to the General Services Administration. This may be somewhat strange because the responsibility for title VI compliance with respect to Federal grants, and title IX, is assigned to HEW. Both GSA and HEW have requested that the Department of Labor redelegate authority under Executive Order 11246, transferring it in effect from a general responsibility at GSA to a responsibility at HEW. That would help to certainly avoid some confusion with respect to the responsibilities for nondiscrimination.

As you may well be aware, Mr. Chairman, many contractors are also grantees and so many stations might very well be subject to multiple jurisdiction. In addition, as has been indicated by the previous witnesses, HEW has been quite concerned about the coordination of its employment discrimination responsibilities under title VI of the Civil Rights Act.

As Mr. Pottinger indicated, we were involved in extensive discussions with both the Department of Justice and the Corporation for Public Broadcasting. It appears to be a rather thorny question as to who has responsibility and what is the nature and extent of that responsibility. It seems to me that the question has become somewhat confused around two points. One is the question of who has authority to make compliance determination decisions and then the second is what funds are in effect or what Federal financial assistance would be at stake if indeed employment discrimination was demonstrated. As I indicated, I participated in discussions with the Department of Justice, and I think it might be helpful to point out that there seems to be a threshold question of responsibility with respect to the administration of Federal financial assistance.

Now, if the Corporation for Public Broadcasting does not have responsibility as an agency, let us say, but has responsibility only as a recipient, then someone else must indeed have responsibility—someone other than the Congress. The question then turns to whether that other agency would be the Department of Justice or HEW. If you follow that line of reasoning and the Corporation for Public Broadcasting is not treated as an agency as such, then as a recipient its funding from congressional sources would be subject to the enforcement by whatever other agency might come into play because it is normal under title VI enforcement that if you treat a recipient as a first-tier recipient, in effect one recipient passing money to another recipient, then it is indeed the legal responsibility of that first-tier recipient to secure compliance or risk the eligibility of its Federal financial assistance.

An analogous situation exists with respect to the State education agencies where under several statutory schemes HEW in effect funds State education agencies which in turn fund local educational agencies. This is the first-tier and second-tier effect. So if you follow one line of reasoning and you say that the Corporation is the first tier recipient and therefore is to be regulated by another agency, then it would indeed be responsible as a first-tier recipient and would be subject to enforcement proceedings if one of its second level recipients or grantees failed to correct employment discrimination. That is a fairly substantial responsibility, particularly given the question of relative control by one organization on the practices of another. So that is exploring one side of the question.

If you explore the other side of the question and you conclude that in some way, as the Department of Justice has concluded, that the Corporation is an agency or has a responsibility to directly secure the compliance of grantees, so it does not fall in this first tier-second tier analysis, then of course having that responsibility it could delegate authority to another agency—in this case HEW—which is what was discussed with the Department of Justice. HEW then could go ahead

and directly administer the nondiscrimination requirements with respect to the grantees of the Corporation for Public Broadcasting.

There are interesting implications either way you go in terms of this question. Now we have been willing and interested in discussing with the Corporation for Public Broadcasting a delegation of authority. We believe that it would be in the best interests of the compliance program for a single agency to be identified and given authority to enforce a nondiscriminatory provision. We are not anxious to add to the set of responsibilities we already have at HEW but at the same time since we do have direct jurisdiction for HEW-funded programs, and that is clear under the statutory structure, it would make sense to consolidate in those situations where an HEW recipient was a recipient of Corporation for Public Broadcasting funds. That would be one jurisdictional question.

It would also make sense to have whatever administrative enforcement process or judicial enforcement process was involved relate to all Federal assistance that was flowing to a particular alleged discriminatory recipient and not just some of the assistance that happened to be within the HEW sphere; if you separated the two spheres for purposes of administrative action, some of the money would be at stake but not other parts of the money. So it would make sense both from a jurisdictional standpoint and from an enforcement standpoint to bring these two things together.

We would couple that with our proposal which we have been urging upon the Department of Labor to consolidate still another responsibility which is the Executive order contract compliance responsibility so that under that proposal, which is essentially the proposal or an amplified version of the proposal which the Justice Department has testified to, HEW would be responsible directly for the compliance of recipients from both the Corporation for Public Broadcasting and from HEW of both grants and contracts.

Now there would still be an overlapping authority with respect to the Equal Employment Opportunity Commission but that is already the case and I think it is clear from the statute that Congress intended to have a separate employment discrimination responsibility at EEOC. While there is an overlap, it is an overlap that is true in virtually all areas of nondiscrimination, of course. So I hope that that may help to at least clarify some of the issues which I think have become so much confused.

I think with respect to the other part of our enforcement responsibility which has been alluded to today, which is the program content question, as my statement indicates I think HEW is very concerned about any role that may be developing or perhaps could be thrust upon it in terms of making enforcement decisions with respect to alleged discrimination involving program content. We see ourselves really as having two separate responsibilities there.

One, I don't think it is fair for the Federal Government, in any of its agencies, to refuse to consider the question of discrimination in programing. While there are very serious and important first amendment concerns, I think at the same time we are talking about the public regulation of the public airways and as a result we are talking about the licensing process of the Federal Communications Commission.

Our proposal, and what we would like to explore, is in effect to use the Commission. We would suggest that the Commission be the appropriate regulatory agency for questions of program content in terms of nondiscrimination requirements.

Now the Commission quite clearly does not at this point see itself as having an independent responsibility to conduct investigations or gather background information with respect to the program content question. At the same time, program content, or putting it in broader terms, community service, is an important part of the Federal Communications Commission's licensing procedures.

What we would like to explore with the Commission, would be an arrangement whereby HEW, if it received a complaint alleging discrimination in program content, would in effect try to gather the facts, get as much information as possible and reach some conclusions with respect to the information that we received. I think it would be extremely helpful to get the assistance of the Corporation for Public Broadcasting in doing that because I think that is essentially a data collection question.

What I would propose then is consistent with the title VI regulations and the title IX regulations. Instead of proceeding through an enforcement process or even a negotiation process in the program content area, HEW would simply informally transmit a copy of its report to the Federal Communications Commission and the Commission then would have a record which was developed by the compliance agency, in this case HEW, which it could use as it would deem appropriate in making decisions with respect to the licensing procedures.

When you talk about enforcement other than enforcement mechanisms which have been traditionally used, title VI permits other means authorized by law to secure compliance with the statutes and one of those other means could be the licensing renewal process of the Federal Communications Commission. So the net effect of my testimony and my concern would be to try to simplify the number of agencies which are involved, try to clarify who has responsibility, separate the employment discrimination issue from the program content issues because I think there are different questions involved.

I think if we could do that, and if we could move forward with, for example, the delegation of authority from the Corporation of Public Broadcasting, clarify the relationship under the Executive order, work out an arrangement with the Federal Communications Commission, that much of the confusion to date could be cleared up and as a result I think a more effective compliance program could be put in place. HEW is more than willing to explore any of these avenues, has been willing for some time to work out arrangements with the other organizations and has at the same time continued, as my statement indicates, to directly investigate and attempt to resolve compliants that have been filed with us.

I would be happy to answer any questions, Mr. Chairman.

[Mr. Gerry's prepared statement follows:]

STATEMENT OF MARTIN H. GERRY, DIRECTOR, OFFICE OF CIVIL RIGHTS, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Mr. Chairman and Members of the Committee: I appreciate the opportunity to testify before the Subcommittee concerning the application of Federal nondiscrimination provisions to the public broadcasting industry.

The Department's Office for Civil Rights is responsible for enforcing a number of nondiscrimination statutes that apply to public broadcasters as to other programs and activities receiving Federal financial assistance. These statutes include:

Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin in federally assisted programs and activities.

Title IX of the Education Amendments of 1972 which, with certain exceptions, prohibits sex discrimination in federally assisted education programs.

And, most recently, Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of physical or mental handicap in federally assisted programs.

In addition, Executive Order 11246, as amended, prohibits employment discrimination on the grounds of race, color, sex, religion, or national origin by federal contractors and subcontractors and requires affirmative action to ensure that employees are treated on a nondiscriminatory basis. A substantial number of public broadcasters are part of, or operate pursuant to, licenses issued to higher education institutions that are government contractors subject to the Executive Order.

The Office for Civil Rights implements the nondiscrimination requirements by means of issuing regulations, gathering and reviewing civil rights data and information covering various types of grantees and contractors, and conducting compliance reviews and complaint investigations.

In the event a review or investigation discloses a violation of the nondiscrimination provisions, the Office first seeks to secure voluntary compliance. If the recipient fails to agree to a remedy designed to eliminate the effects of the discrimination, the Office is required to initiate enforcement action. Enforcement may take the form of an administrative hearing, which may ultimately result in the termination of Federal assistance to the recipient. Or, alternately, the Office may request the Department of Justice to file suit to enjoin the discriminatory practices found to exist. This general procedure applies to all recipients of federal assistance subject to the nondiscrimination provisions, such as hospitals, public school systems, institutions of higher education, and public broadcasters.

With respect to public television stations, it is my understanding that all of them receive an unrestricted community service grant from the Corporation for Public Broadcasting (CPB) on an annual basis. HEW is not responsible for the enforcement of Title VI or other civil rights provisions in regard to such funds granted by CPB, although the recipients of CPB may be receiving other forms of federal assistance for which the Department is the compliance agency.

For instance, the Educational Broadcasting Facilities Program, administered by the Department's Office of Education, has provided assistance to help activate 157 educational television stations and 63 public radio stations. Since fiscal year 1963, 629 grants, totaling $118 million, have been awarded under this program. The Emergency School Assistance Program, also administered by the Office of Education, has been a major source of federal assistance.

According to a publication recently issued by the National Center for Education Statistics and CPB, federal monies amounted to 17 percent of the total income received by public television licensees during fiscal year 1974.[1]

In addition, our information indicates that, of the 152 licensees of public television stations that existed as of July 1975, 16 were local school boards and 52 were institutions of higher education which receive forms of federal assistance. To the extent that the operation of the stations and the services provided by them are an integral part of the educational systems, the stations might well be covered by the nondiscrimination statutes by virtue of the fact that their parent institutions are.

From a civil rights standpoint, our interest is twofold. In the first instance, we are concerned that public broadcasters serve the interests of numerically significant racial and national origin minority groups and women within the service area. And, secondly, we are concerned that equal employment opportunity be practiced by public broadcasters.

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[1] Public Television Licensees, fiscal year 1974 (advance edition). National Center for Education Statistics and Corporation for Public Broadcasting, 1976.

At the same time, the Subcommittee should be aware of two related issues that have properly caused the Department to exercise great care in undertaking compliance activity.

First, any time a government agency deals with a broadcaster—public or private—there is the possibility that First Amendment issues will arise. Our Office is acutely sensitive to this possibility, and for that reason, will proceed very carefully to ensure that in enforcing the rights of those whom the statutes are designed to protect, the First Amendment rights of broadcasters and the general public are not eroded in the process.

The second related issue involves the Title VI applicability to employment discrimination. In this regard, the statute prohibits employment discrimination when the primary objective of the federal assistance extended is to provide employment or when such discrimination has a direct and consequential impact upon the beneficiaries of the federal assistance.

For example, the treatment of current or prospective employees in positions which have a direct impact on the viewing or listening audience would be covered, such as on-air talent and teachers or others appearing on broadcasts. Other employees covered would include those who are in a position to materially affect broadcasting decisions, such as writers, editors, or perhaps personnel specialists. While guidelines can be prescribed, judgments as to which positions are covered at any particular station can only be made on a case-by-case basis. At the same time, it should be kept in mind that the other major provisions I referred to earlier—Title IX, Section 504, and the Executive Order—do not contain the same restrictions.

Our records show that the Office for Civil Rights has received 11 complaints alleging discrimination by a public broadcast station or licensee. In a majority of these cases the complainants allege race discrimination in employment. In five of the cases, the investigation has been completed or is under way. In one instance, the complaint was withdrawn, and in another, we found no jurisdiction. The remaining four cases are still pending action.

The number of complaints filed against public broadcasters is small compared to the volume of complaints the Office receives involving, for instance, school districts and institutions of higher education. In these areas, a backlog of over 1400 complaints has accumulated. Based on this pattern as well as other factors, the Office has traditionally placed primary enforcement emphasis in the areas of elementary, secondary and higher education.

For the future, the Office has three objectives in mind with respect to public broadcasting.

Consistent with our resources and statutory authority, we will continue to investigate complaints involving public broadcasters.

In this connection, Secretary Mathews has announced the Department's policy to ensure the resolution of all civil rights complaints on a timely basis. And we have adopted a national plan to deal with all complaints against public school systems under certain uniform procedures and timetables. During the next several years, the investigation of complaints will be a top priority.

As the Office proceeds to deal with civil rights issues as they affect public broadcasting, we hope to be able to articulate more clearly and in greater detail the nature of the nondiscrimination obligations which federally assisted stations are required to live up to. As a first step in this process, the Office has developed preliminary guidelines which are now under review.

Finally, we intend to explore new mechanisms that could prove helpful in enhancing the overall impact of civil rights standards in the industry.

To this end, the Office has met on numerous occasions in the past with representatives of CPB, other federal agencies, and the industry, and we will continue to do so as a means of finding effective ways to ensure compliance with the statutes HEW enforces.

The Federal Communications Commission is charged with the responsibility of regulating the air waves in the public interest. In carrying out this responsibility, the FCC must review and, if appropriate, renew existing licenses every three years.

The license renewal process may well constitute the most appropriate vehicle for considering whether a particular licensee or station is providing services in a nondiscriminatory manner and with due consideration to minority group interests. It is the FCC which, after all, establishes broadcast standards—standards designed to ensure that public broadcast stations serve the whole community.

Accordingly, in the months ahead we intend to examine more carefully the feasibility of providing the FCC with formal findings made by our Office as a means of enforcing the nondiscrimination statutes effectively and promptly.

In conclusion, Mr. Chairman, I would like to underscore the Department's commitment to ensure the compliance of public broadcasters with the nondiscrimination provisions we enforce.

Last year, the Committee's report on H.R. 6461, the Public Broadcasting Act of 1975, asserted that while progress had been made, much more could be done to increase the opportunity of women and minorities to gain employment at responsible positions in public broadcasting.

We share the Committee's support for this objective.

Thank you.

Mr. VAN DEERLIN. Thank you, Mr. Gerry.

I must say that after hearing you I can't help thinking that if I were black or a Mexican-American and aspiring to a career in public broadcasting and feeling that my ethnic background was standing in my way, I would not find much to warm my hands on in the enforcement procedure as it exists today, and I am beginning to think that probably this is not because we have too few layers of enforcement but clearly too many. The responsibility is diffused and it may therefore be avoided, and this is no more a reflection I am sure on the agency that you represent than it is on any of the others that have a share of the responsibility.

I am sure that if I asked you if you have a sufficient number of people employed in enforcement in your agency your answer will be no but let me ask the question nonetheless. How many people do you have working in the Office for Civil Rights?

Mr. GERRY. The current budget figure I believe is approximately 900 positions and the fiscal year 1977 budget figure is approximately 1,050. Those people, of course, are responsible for all of the enforcement responsibilities of the office, including not only public broadcasting but including all of the elementary and secondary schools.

Mr. VAN DEERLIN. I understand.

Mr. GERRY. Mr. Chairman, I think it would be unfair for me to leave the impression that I am pleading a lack of resources here because I really am not. I think that given the number of complaints that we have had—and I think that there are reasons why we have not had many complaints that ought to be explored—but given the current level of activities that the various agencies who have testified have indicated, while as I said I am not anxious to take on new responsibilities I think that we certainly have adequate resources to significantly improve the overall responsiveness of the Government in this area without new resources, at least for the time being, simply by agreeing upon who has the responsibility for proceeding, get the delegation signed and really just try to bring some order to the chaos that currently exists.

Mr. VAN DEERLIN. To some I suppose it might appear that the suggestion for an interagency task force is a holding device for doing nothing, but do you think that perhaps such an approach might help pinpoint responsibility and at least satisfy the complainants that there will be a responsive mechanism to their complaints?

Mr. GERRY. Well, let me say, Mr. Chairman, I share those concerns in general about task forces because they are sometimes inadvertently even used or have the effect of delaying the resolution of the problem. I would say this. The key agencies involved in this issue are the Depart-

ment of Justice, the Equal Employment Opportunity Commission, the Department of Labor with respect to the Executive order program, and the Corporation for Public Broadcasting and the Federal Communications Commission.

Those are organizations and entities which I think ought to meet and discuss regularly how to resolve this question. I think that is a good idea but I think at the same time that the Justice Department has already come forward with a proposal with respect to trying to solve at least one of the major questions here, which is the responsibility of the Corporation for Public Broadcasting. My impression is that the problem that has arisen with that has to do with the conflict of legal opinions as to the status of the Corporation for Public Broadcasting.

Mr. VAN DEERLIN. It was the intent of Congress, there is no question, that the CPB should be beyond the reach of political influence.

Mr. GERRY. I understand that, Mr. Chairman. I am just saying I am not sure whether the interagency task force could resolve that question since there seems to be a disagreement betwen the Department of Justice and the corporation. I would simply urge, and I think in that sense that it is possible, to resolve it only for purposes of the authority to enforce these particular statutes. I think it is possible to reach a decision that there is responsibility without necessarily implying that the corporation for all purposes or most purposes or even other purposes is reachable.

I guess my concern, Mr. Chairman, is that we seem to be hung up on a technicality where everybody is in agreement. That is, the Corporation for Public Broadcasting does not want to carry out the enforcement responsibilities. The Department of Justice indicates that it is perfectly all right for them not to do so if they delegate it—that is, sign a piece of paper delegating it to another Federal agency.

On this particular delegation it seems we are joined in a technical circle. I understand that it raises important questions about the Federal control of public broadcasting, and I understand that there are serious implications there, but I really think that the parties are pretty much in agreement on who ought to do what, but what is standing at this point betwen us is a legal technicality of sorts.

Mr. VAN DEERLIN. Well, we will try and cut our way through that. Maybe we nonlawyers can be helpful. We will surely stand ready.

Just to pin down the procedures, when a station receives a facilities grant, which is what brings HEW into the picture in this enforcement procedure, for what period of time is the station which is the recipient of the grant under your jurisdiction for title VI or title IX purposes?

Mr. GERRY. Well, as soon as the grant is received the grantee must sign an assurance of compliance with the statutes, which is an HEW form and a contractual agreement that it will not discriminate. It is a fairly standard procedure for the life of the grant. The grantee is directly subject to the jurisdiction of HEW and there is no question about that.

If discrimination allegedly occurs during the life of the grant but the investigation with respect to that discrimination is concluded after the life of the grant, then the Government is entitled as part of its enforcement procedures to pursue the matter not by terminating funds, because that would be impossible, but by determining the grantee to be

ineligible for future grants. So actually you have two separate questions. The jurisdiction question—that is, the alleged violation—has to do with the receipt of Federal money in the first instance, and the question of enforcement can occur even after a grant concludes if the alleged violation occurred during the life of the grant.

Mr. VAN DEERLIN. Well, I don't like to zero in on particular cases but let us say that a station which has been referred to earlier in the testimony in a substantial black urban community in the Midwest receives a grant at a time that it has no blacks employed and promises not to discriminate. Does this red flag itself in your office or what does happen? Do you want for someone to come in and say, "Hey, what about this?"

Mr. GERRY. I think that is a good question, Mr. Chairman, and I would have to say that over the last several years we have been complaint-oriented in this regard. We have responded to the complaints but we have not received very many complaints.

I think that we ought to be proceeding in conjunction with the data gathering efforts that were referred to earlier. We ought to be setting up some sort of screening mechanism to regularly assess those situations where there seem to be significant disparities between the number of minorities and women and handicapped persons employed by the recipient in what appears to be the relevant labor market statistics.

That is not an unusual approach to employment discrimination. We are just really beginning now to develop our over-all compliance program and have been hampeerd to a certain extent by this jurisdictional question of who is responsible for which grants. I would agree with you, Mr. Chairman, that we should be monitoring the overall employment statistics of the industry in a regular way and not necessarily tying all of our resources to complaint investigations.

Mr. VAN DEERLIN. Thank you, Mr. Gerry.

Mr. Shooshan.

Mr. SHOOSHAN. Thank you, Mr. Chairman.

Mr. Gerry, I would like to follow up the question that the chairman asked you about personnel. Could you use more people? The answer is probably yes until it comes time for OMB to swing its ax. It is interesting, I think, to develop this for the record because your statement indicates a great deal of commitment and willingness to approach this area. In written questions that were submitted to you which you replied to on June 7 under a cover letter from Secretary Mathews, you said that up until the end of 1975 there were, I believe, three full time people—one GS–15, one GS–11 and a summer intern working full time on summer broadcasting programs. Currently there are three staff people working part time on public broadcasting.

Now let's focus the chairman's question narrowly in this area. Are there enough people in your office working on this particular problem which is the subject of these hearings today? Could there be more resources made available, do you feel, or should there be?

Mr. GERRY. First let me indicate that I have a copy of the response and it indicates that the people that you are talking about were working on policies for public broadcasting. That is somewhat different than the number of people who are working on the actual investigation of complaints. That is, we have a unit in our headquarters office, our

Washington office, which is more or less policy development oriented. Our regional offices have most of the responsibility for complaint investigation.

What we are doing to address the question I think right now is very important to this whole issue. We are involved right now in the development of the reorganization of our office. We have traditionally been organized around institutional divisions. We have an elementary and secondary education, a higher education division, a contract compliance division which is a creature of the Executive order and a Health and Social Services Division. We are reorganizing to eliminate those separate institutional boxes.

One of the problems we have had historically, to be quite frank, is that educational television or public broadcasting has not fit into any of those divisions and as a result there has been a tendency for it to become a side activity. That is the reason for the separate staffing. What we are going to be doing as a result of reorganization is to eliminate the gaps that exist right now by reorganizing our headquarters office functionally around the developing policies, and a regional office around the actual compliance review activities.

As a result, as employment discrimination complaints come in, as compliance reviews are scheduled, as a result of monitoring, all of our staff will be just as fully occupied carrying out responsibilities in this area as they have traditionally been in the various institutional areas. That is one of the reasons I answered the resource question the way I did. The reorganization will permit us to identify a significant number of staff that can be used to follow up on the complaint.

Now, if the level of complaints significantly increases as we develop policies through monitoring, and try to schedule significant numbers of compliance reviews, then the resources question may have to be looked at again. I guess the point I was trying to make in response to the Chairman's question is that it would be very misleading for me to say right now that the solution to this problem, or the main reason that more has not been done to improve the enforcement in this area, is the resources question. I think it is much more the question of the confusion that exists, the overlapping of responsibilities and the lack of pulling the thing together.

Mr. SHOOSHAN. Well, my question didn't go just to the subject of enforcement. You have said in your statement and you have said, I think, in your verbal summary of your statement there are 11 complaints in the area of public broadcasting. If this committee is to believe the extent of the problem out there, then perhaps you are correct in your assessment that you are not getting all the complaints you should be.

That leads me to the question that, under title VI responsibilities, as I understand them, the Secretary is given responsibility and has in many areas promulgated guidelines for title VI. Now are you considering or is anything being done as far as a special set of guidelines for public broadcasting which would involve obviously policy people, not enforcement people? Are you thinking of those?

Mr. GERRY. We have given some consideration to that. Let me just indicate that the title VI regulation which is the primary vehicle,

through which the Department enforces the statute applies to public broadcasting as it does to all other types of institutions. In a few instances over the years the Department has issued guidelines; it has not done so often. It was done at one point with respect to the southern school desegregation process. Guidelines were issued which dealt with the acceptability of freedom of choice plans. Instead of guidelines, what we have traditionally done is to try to develop what we call standards and procedures for the use of our staff.

My feeling is quite frankly that looking at the problems of employment discrimination in this area is not particularly different than looking at problems of employment discrimination in other technical or professional areas. Our office has had some exposure with respect to the questions of employment discrimination and the professional hiring practices of universities, of hospitals, and of other organizations; we have never professed to be totally comfortable with all of the technical dimensions of the operations of those organizations, but at the same time we have had, I think, some ability to analyze employment discrimination patterns.

I guess my feeling is that the low number of complaints is not so much the result of a failure to develop and promulgate guidelines as it is the failure to publicize precisely what the jurisdictions are, publicize the fact that the Federal Government does have a civil rights enforcement responsibility, and identify the agency. Hopefully, we could get that information to the public in the form of a public information program, which I am sure CPB would support. I don't think the problem is guidelines or standards. I think the problem is public awareness of the applicability of these provisions and some sense of who the appropriate agency contact is.

Mr. SHOOSHAN. It was suggested in an earlier question directed to Mr. Loomis that the Corporation for Public Broadcasting could be much more specific in the provisions of its contracts with grantees with regard to Federal antidiscrimination laws and their impact. Would you see, just off the top of your head, any role for the local stations to notify the public as a part of their programing, that their funds include Federal funds and that there are certain antidiscrimination responsibilities incumbent on them therefore? Do you feel the licensee should share in the responsibility of disseminating this information?

Mr. GERRY. I could give you a definitive answer. I think it is an interesting idea and it is certainly one that should be pursued because I think that the reason in some instances for the low number of complaints is the failure to get to the public the information about the program. Here you happen to have a recipient that does have an ability over and above most recipients to communicate. At the same time, the minute you begin to discuss what recipients ought to communicate, you are getting closer to the program content question, and in this particular instance that may not be a problem, but again I would have to think carefully about that because I am sensitive to any discussions that lead us to what somebody ought to say on the air.

Mr. SHOOSHAN. I just have two quick points to follow up, points that the chairman raised on this question of jurisdiction of your agency. Say a grant runs for a period of a year and in that period of time a new

transmitter is constructed or new equipment is put in the studio. Then the period of the grant expires. Do you have any jurisdiction subsequent to that time? The station is sitting there with a piece of equipment that has been funded by Federal funds yet the actual contract period has passed. Does your monitoring or enforcement extend to that period beyond the contract date?

Mr. GERRY. I am advised that the statute requires that the Federal Government maintain a 10-year interest in the equipment. I think I would like to, if I could, supplement the record with an opinion from the General Counsel's office on precisely how long the jurisdiction runs and in what way. I think it is a little bit too difficult a question for me to answer without consulting with the General Counsel.

Mr. SHOOSHAN. Perhaps while you are supplementing the record you could supplement the record with regard to those 11 complaints on page 5. Precisely what has been done? What is the status of each of those complaints? The committee is interested to know what sanctions you can or have used to back up your enforcement.

Mr. GERRY. Be happy to provide that information.

[The following information was received for the record:]

REGULATION TO IMPLEMENT TITLE VI

The regulation issued to implement Title VI of the Civil Rights Act of 1964 provides that as a condition to receiving Federal financial assistance, an applicant for assistance is required to give an assurance of compliance with Title VI. Where the assistance is in the form of personal property, such as in the case of a transmitter, (45 CFR Section 80.4(a)) provides:

> . . . the assurance shall obligate the recipient for the period during which he retains ownership or possession of the property.

COMPLAINTS OF DISCRIMINATION

In regard to complaints of discrimination submitted to the Office, 11 complaints have been submitted alleging discrimination by a public broadcast station or licensee. In a majority of the cases, the complainants allege race discrimination in employment. In five of the cases, the investigation has been completed or is underway. In one instance, the complaint was withdrawn, and in another, we found no jurisdiction. The remaining four cases have not yet been acted on.

Mr. SHOOSHAN. Thank you.

Mr. VAN DEERLIN. Mr. Coleman.

Mr. COLEMAN. No questions.

Mr. VAN DEERLIN. Thank you, Mr. Gerry, and those who are with you for helping us get to the facts on the volatile question.

The hearing will resume at 10 a.m. tomorrow.

Thank you.

[Whereupon, at 1:04 p.m., the subcommittee adjourned, to reconvene at 10 a.m., Tuesday, August 10, 1976.]

ENFORCEMENT OF EQUAL OPPORTUNITY AND ANTI-DISCRIMINATION LAWS IN PUBLIC BROADCASTING

TUESDAY, AUGUST 10, 1976

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMUNICATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2322, Rayburn House Office Building, Hon. Lionel Van Deerlin, chairman, presiding.

Mr. VAN DEERLIN. The hearing will come to order.

Before proceeding with our witness list this morning and beginning with the Chairman of the Federal Communications Commission, I think it is only fair to correct the record on one point that was made in yesterday's hearing. The Public Broadcasting System wishes to correct a misimpression left by Mr. Grossman regarding the Cleveland educational television station. Of the 70 employees of that station, 4 are black. Of the 39 board members selected from the community, 4 are black. That is still not what might be called exemplary but at least it is a better record than was described to us yesterday which was that none of the employees of that station were minority members.

Welcome to the subcommittee, Chairman Wiley. It is always a pleasure to have you with us. If you will proceed with your testimony, we will be very grateful.

STATEMENT OF HON. RICHARD E. WILEY, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION, ACCOMPANIED BY RICHARD J. SHIBEN, CHIEF, RENEWAL AND TRANSFER DIVISION, BROADCAST BUREAU

Mr. WILEY. Thank you very much, Mr. Chairman.

I welcome this opportunity to participate in these hearings and to discuss with the subcommittee the subject of equal employment opportunities for minorities and women in educational—or noncommercial—broadcasting.

I have with me Mr. Richard J. Shiben who is the Chief of the Renewal and Transfer Division of the Broadcast Bureau.

Initially, Mr. Chairman, it should be noted that there are 845 educational FM, 155 educational television and 98 VHF educational television stations now licensed and operating in the United States. These stations are subject to the same Commission rules and enforcement efforts relating to nondiscrimination in employment that are appli-

cable to commercial broadcasters. In this regard, Mr. Chairman, I would like to review for the subcommittee the Commission's overall efforts to promote equal employment opportunities for minorities and women in broadcasting, including educational broadcasting which represents approximately 12 percent of our licensees.

As you may know, the Commission was the first regulatory agency to express the view that discrimination in employment by its licensees was incompatible with operation in the public interest. This finding was based on the fact that broadcast licensees, as public trustees, are under an obligation to insure that their programing reflects the tastes, needs and desires of all elements of their communities. The Commission, therefore, instituted a rulemaking proceeding to explore various means of insuring nondiscriminatory employment practices by broadcast licensees.

Following this inquiry, the Commission in 1969 adopted rules which not only prohibited discrimination but also required licensees to develop programs designed to assure that their personnel policies and practices did not contain barriers to equal employment opportunities for all persons regardless of the race, color, religion or national origin. In 1970 the Commission adopted additional rules requiring each licensee with five or more full-time employees to file with its application written programs designed to assure nondiscrimination in such areas as recruitment, selection, hiring, promotions, and so forth. At this time, we also adopted a requirement that licensees file with the Commission an annual employment report—commonly referred to as FCC form 395—setting forth a statistical summary of their employment profile. In 1970 we also added women to FCC form 395 and, in 1971, we included women in the class of protected groups subject to equal employment programs.

In July 1975, the Commission instituted still another proceeding relating to nondiscrimination in the employment policies and practices of broadcast licensees. This proceeding was instituted for two primary reasons. First, it was designed to clarify the meaning of affirmative action as a necessary complement to the mere avoidance of discrimination. More specifically, following several years experience in reviewing the equal employment programs submitted by some licensees it became apparent to the Commission that these licensees did not fully comprehend the meaning of an affirmative action program—which, in simple terms, requires licensees to take additional steps to seek out minorities and women to provide them access to employment opportunities at their stations. Second, the Commission's 1975 inquiry proposed certain changes in our procedures designed to increase the effectiveness of our enforcement efforts in the area of equal employment opportunities.

Following the filing of rather extensive comments and reply comments in this latest proceeding, all of which were carefully reviewed and fully considered, the Commission, on June 22, 1976, adopted its report and order concerning these new proposals. Briefly, the changes in our guidelines require broadcast licensees to file not only more detailed and specific equal employment opportunity programs but, more importantly, additional information relating to the implementation of their programs.

Thus, licensees are now required to file with the Commission statistical data relating to the respective minority and female work forces in the station's recruitment area and to compare such information with their current minority and female employment profile. In this latter respect, stations with fewer than 50 full-time employees are now required to file a current employment profile at renewal time if there has been a change in the composition of the station's staff since the filing of the latest annual employment report.

Stations with 50 or more full-time employees must now file a survey of their work force containing a listing of all job titles within each FCC form 395 category with minorities and females identified. Additionally, each licensee is now required to provide statistical data on the number of total persons hired with a breakdown of minority and female new hires. Also, each station must describe the effects of its promotional policies on minority and women personnel.

Regarding enforcement, our new policy calls for the use of goals and timetables as a remedial measure where it is determined that the licensee's program is producing inadequte results. In sum, Mr. Chairman, we believe that our most recent action signifies a renewed and strengthened commitment to foster equal employment opportunities for minorities and women in broadcasting.

As I previously indicated, the Commission's initial rules required all stations with five or more full-time employees to file both an annual employment report and an equal employment opportunity program. However, in our most recent rulemaking proceeding, the Commission exempted stations with 10 or fewer employees from filing an equal employment opportunity program but not the annual employment report. We did so for several reasons.

In evaluating compliance with our nondiscrimination rules and policies, the Commission, in the first instance, must rely on a statistical analysis. This is accomplished by comparing the station's minority and female work force with their respective percentages in the relevant labor market. If there is a substantial disparity, then the station's compliance with our EEO rules may be drawn into question. However, as the Commission noted in its recent report and order in docket No. 20550, the courts have rejected the use of statistical data to prove a prima facie case of discriminatory conduct where the statistical universe is relatively small or insignificant.[1]

Our experience has also shown that as the size of a station's staff decreases, statistical data is a less and less useful tool for identifying discriminatory employment practices. This is exemplified by the case of the station employing say seven or eight full-time employees, none of whom is a minority, in an area where minorities constitute 10 percent of the labor force. In such a situation, parity in employment could be achieved by employing a fraction of one minority. Since the law does not in any event require employers to achieve a quota or 100 percent of parity, it is obvious that there is no meaningful way to monitor the effectiveness of an affirmative action program at such a station.

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[1] See, e.g., *Harper* v. *Transworld Airlines*, 525 F. 2d 409 (8th Cir. 1975); *Ochoa* v. *Monsanto Co.*, 473 F. 2d 318 (5th Cir. 1973).

We also found it would ill-serve the public interest to require stations with 10 or fewer full-time employees to assume the administrative burdens of their larger counterparts. To this end, it must be recognized that written equal employment opportunity programs tend to formalize an employer's employment policies and practices, a formalization that is normally foreign to the operation of a small business. Taking this fact into consideration, the Commission also stated:

> A small business, generally speaking, has little need for written guidelines for initial employment, for later advancement, or for wage increases. In view of its smallness, such a business does not normally have the resources to devlop formal personnel procedures, including the development of standardized job descriptions and objective—rather than purely subjective—employment criteria. As noted in *McAdory* v. *Scientific Research, Inc.*, 355 F. Supp. 468 (1973), whatever impact the lack of written guidelines may have upon larger companies under Title VII and EEOC's regulations, a small company with limited personnel and continually changing labor requirements will experience unnecessary hardship in maintaining such a program. Further, the fact that Congress excused small businesses from the applicability of Title VII provisions also evidences a legislative intent that small companies, such as small broadcasters, be excused from complying with the mechanical requirements applicable to larger businesses. See 42 U.S.C. 2000 e(b) (1970). . . .

With respect to the foregoing, we should also note the effect of the Commission's exemption on educational broadcasting. As noted at the outset, there are 1,098 educational broadcasting stations in the United States. Of these, 772 have fewer than 5 full-time employees and only another 144 stations have 10 or fewer employees. Of all reporting units, 170 educational stations, which employ 87 percent—or 7,423—of the total full-time positions in noncommercial broadcasting, must file the Commission's more comprehensive equal employment opportunity program. So 87 percent of the noneducational stations are covered by the reporting requirements on the EEO program.

Concerning our enforcement efforts, Mr. Chairman, shortly after the adoption of our reporting requirements in 1970 the Commission's staff concentrated its efforts on reviewing each licensee's employment program to assure that it complied with the guidelines set forth in section VI of our various application forms. As with any new requirement, many initial programs were found deficient in one respect or another. Consequently, literally hundreds of contacts were made with licensees to provide them—I might even say thousands—guidance on how to develop a program designed to assure nondiscrimination in their employment policies and practices. I might add, in this respect, Mr. Chairman, that the interpretation of our then newly adopted rules and guidelines and their application to broadcast employment imposed upon our staff, as well as broadcasters, a process of learning in which, through trial and error, progress has been made by both parties.

Beginning in 1972, we started focusing on stations showing zero employment of minorities or women, or a decline in employment of these protected groups from one year to the next. Since that time approximately 10 percent of all stations—including educational broadcasters—required to file annual employment reports and equal employment opportunity programs have been requested to explain in detail why they employ few or no minorities or women.

It is worth noting that the overwhelming majority of these inquiries have been made on our own motion and not as a result of a petition to deny or other informal objection. It is also worth noting, Mr. Chairman, that, again on our own motion, the Commission has conditioned the renewal of licenses of approximately 25 percent of all stations we have queried with the requirement that they submit (i) a detailed list of minority and female applicant referral sources to be used in soliciting such candidates where job openings occur; and (ii) a periodic report on the results of these recruitment efforts, specifically identifying newly hired and promoted minorities and women.

We have also designated several applications for evidentiary hearing on employment issues where it was clear that a substantial and material question of fact existed as to the applicant's efforts to comply with our nondiscrimination rules. This record, I submit, shows our willingness to utilize the sanctions available to the Commission in correcting employment deficiencies—namely, the underrepresentation and underutilization of minorities and women on a licensee's staff.

There is one other aspect of our enforcement policy which merits note—namely, the Commission's "zone of reasonableness" standard. Many parties have consistently maintained that a disparity between the number of minorities and women employed at a broadcast station and their respective percentages in the labor market automatically raises a prima facie case of discrimination which requires resolution in an evidentiary hearing. However, both the Commission and the Courts have rejected this argument.

In several leading broadcast employment cases, the U.S. Court of Appeals for the District of Columbia Circuit set forth the standard to be applied in determining whether charges of employment discrimination warrant designation of an application for evidentiary hearing. Thus, in *Stone* v. *FCC*,[1] the court held that "[s]imply indicating the number of [minority group members] employed by the licensee, without citing instances of discrimination or describing a conscious policy of exclusion, is not sufficient to require evidentiary exploration." On denial of rehearing in *Stone*, the court did indicate that statistical evidence alone could constitute a prima facie case of discrimination, but only if the statistics indicated an extremely low rate of minority employment. Subsequently, in *Bilingual Bicultural Coalition on the Mass Media, Inc.* v. *FCC*,[2] the court went on to explain that:

> The two opinions in *Stone* should, of course, be read together—a disparity that is reasonable in light of a recruitment policy might not be reasonable in its absence.

Accordingly, in reviewing a licensee's employment practices, the Commission, I believe, has properly focused its attention not only upon employment statistics, but also on the licensee's efforts to implement an effective employment program. It also has been our view that the principal method of achieving compliance in this area is through the imposition of remedial measures designed to improve the overall participation of minorities and women in the broadcast industry. As the

[1] 466 F. 2d 316, reh. den. 466 F. 2d 331 (D.C. Cir. 1972).
[2] 492 F. 2d 656 (D.C. Cir. 1974).

Commission recently stated in its Report and Order in Docket No. 20550:

> In accord with the usual common sense principle expressed in Title VII of avoiding litigation where possible, where we believe that a licensee has merely failed to take sufficient steps to ensure equal employment opportunities for minorities and women, our preferred solution has been to order the licensee to take immediate corrective steps and to monitor its future affirmative action efforts. In many cases these EEO reporting requirements have been imposed as conditions to license renewal grants. We propose to continue this practice. In our view, this procedure does not contravene the public interest considerations inherent in the Communications Act in passing upon applications.

Mr. Chairman, our enforcement efforts have had a significant impact on the employment policies and practices of broadcasters, including educational broadcasters. Broadcasters are, today, much more aware of their affirmative action responsibilities than they were 5 years ago. Predicated on our analysis of annual employment reports since they were filed in 1971, we find a continuous trend of increasing minority and female employment in both commercial and noncommercial broadcasting.

Minority representation in educational television broadcasting, for example, was initially 7.4 percent and is now 14.6 percent. Similarly, in educational radio, minority representation in 1971 was 5.7 percent and is now 12.1 percent. Overall female employment in educational television in 1971 was 27.1 percent and is now 31.6 percent, and in educational radio female employment has generally been around 28 percent during the reporting periods in question.

Such indices of progress do not often get attention. The point is, however, that on a national scale our rules and enforcement efforts have encouraged what we believe to be a significant increase in the number of minorities and women employed in educational broadcasting. And, as we look to the future, we are confident that the broadcast industry will continue its efforts to further increase overall participation of such individuals in its work force.

Mr. Chairman, that concludes my statement. Naturally, Mr. Shiben and I will be glad to answer any questions.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

How does the record of public broadcasting compare to commercial broadcasting in this regard?

Mr. WILEY. I think it is equal to or slightly better, and I might say I think it should be better because after all we are dealing here with an industry which is utilizing public funds and I think we have a responsibility and obligation to insure equal employment opportunity and I would expect noncommercial stations to be doing well in this area.

Mr. VAN DEERLIN. Your enforcement machinery that has been in your staff numbers a half dozen people, does it?

Mr. WILEY. Yes. We have also requested an additional three people for Mr. Shiben's office which I think will assist him in doing a better job of gathering information and frankly enforcing the rules on a case-by-case basis.

Mr. VAN DEERLIN. What does their operation consist of? Do they operate totally out of Washington reading the reports and checking them and so on?

Mr. WILEY. Essentially that is right, although we said in the most recent Report and Order, Docket 20550, where appropriate we would engage in onsite inspections, and since the date of that report in July, we have engaged in one such event that I am aware of, one such onsite inspection.

Mr. SHIBEN. Our primary enforcement effort focuses on, number one, the final reports and the EEO reports submitted at renewal time. If we have questions about the profile in relation to a report, for the most part we direct letters of inquiry to the stations asking for a rather detailed list of information on all new hires, promotions, etc. When we have a very serious problem, we would refer that matter then to Bill Ray, the Chief of the Complaints and Compliance Division, and ask for an investigation. Generally that is also coupled with other factors that we have problems with.

Mr. VAN DEERLIN. There is no question that a visit from any personnel from the Federal Communications Commission has a profound effect on the management of a station, commercial or publicly owned. In light of our references to Cleveland yesterday which proved inaccurate, I am reluctant to mention specific outlets but I have been advised of a border state public station which with about 30 percent black community again is purported to have not one minority employee. This is a fairly large community. How can this be permitted to go on under the oversight system that the Commission is employing?

Mr. SHIBEN. Generally if it comes up for renewal, it would not be allowed to go on. We would catch it if the computer does not kick it out to begin with. That type of station, I might mention the second station just has got to come out. I just can't see it not going out. The first station that you mention I think has been kicked out.

Mr. VAN DEERLIN. You say kicked out. What do you mean?

Mr. WILEY. It is for special review.

I think that what we are saying is in effect that when these stations hit a certain level and certain indicia they will be subjected to specific review by the Commission staff, and I would say that when we are considering renewals of stations we probably spend more time on equal employment opportunity questions than any other single issue, and I would say that stations today are getting a searching review by the Commission based upon statistics and based upon the filings that they have made with us.

Mr. VAN DEERLIN. Now I think I have heard each of you say, and of course it would be more significant coming past your lips, Mr. Wiley, that the renewal process itself would be used without hesitation to deal with this question and I suppose that the ultimate weapon is a nonrenewal.

Mr. WILEY. That is true. Equal employment rules are rules like any other Commission regulations and we expect them to be observed by our licensees and we will enforce them accordingly. Now I will say that we have been attempting to develop progress in the broadcast industry. We have been attempting to try to develop overall improvement in the industry and accordingly much of our enforcement has been directed toward conditions as we mentioned in our statement today attempting to make the broadcaster give us additional reporting about the number of people he is interviewing, the number of people that he is hiring.

what percentage are in minority categories in order to insure that he is really complying with the spirit and letter of our regulations.

Mr. VAN DEERLIN. But this process will apply to only about 15 to 20 percent of the stations, will it?

Mr. WILEY. No; that is not true. I think there is really a misunderstanding in this respect. This applies to all stations that have five or more employees that filed the 395 forms as it always has been. We give all those stations a searching review so it applies to the great bulk of stations.

Mr. VAN DEERLIN. What the smaller stations are relieved of is simply the extra affirmative action developing programs and possibly training programs?

Mr. WILEY. Well, what they are exempted from in the most recent report and order and consistent with it, by the way, was the recommendation the Commission received from our own equal employment staff, to move the threshold for filing an affirmative equal employment program from 5 to 10, and I mentioned the two reasons why the Commission basically adopted that recommendation. No. 1, we feel from a statistical standpoint when you get much below 10 the statistics are relatively meaningless because as I say I gave you the example in my statement of a station of seven or eight employees with 10 percent minority employment in the community where one person would be more than parity. A fraction of a person would be a sufficient parity. So the statistics are not very meaningful. No. 2, we are concerned, as I know the subcommittee has been throughout the whole gamut on the regulations, with the burdens our regulations place on small licensees.

Mr. VAN DEERLIN. That is true. Any elected officeholder is very sensitive to extra paperwork, and I cringe at some of the paperwork you described in your statement. By the same token, whether it is a newspaperman or radio or many businesses with which I am unfamiliar I am sure, too, it is in those small operations where you get your start. I have had managing editors in cities like St. Louis tell me, well, come back in a couple years after you have worked a while in such and such a town. One of them told me that and I worked 2 years in the other town and he died. The point is that this is where the training is going to take place and if we overlook this level entirely there are going to be a lot of people who are never going to break into the business.

Mr. WILEY. I don't disagree with that and let me make it very clear because there has been a lot of obfuscation in this area that we are not overlooking these small stations. We are continuing, as we always have, to look at the 395 forms on those stations to insure that they are complying with our equal employment rules. We will be looking at them at renewal time and any station that has any other concept is just operating under a misunderstanding because we are going to continue to enforce those rules and we are going to continue to expect our stations to have programs to insure nondiscrimination in broadcasting.

Mr. VAN DEERLIN. It seemed to me at least after yesterday's testimony that the Commission represents our only realistic hope for getting this job done. We had some very well intended testimony yester-

day from HEW and the civil rights enforcement arm and it just seemed to bog down. There were too many layers of enforcement and I can only conclude that many licensees don't regard too seriously the input they get from some of these other levels of enforcement. I just know very well that when they get an inquiry or a stern message from the FCC they pay attention because that is where it all begins and where it can all end.

Mr. WILEY. Well, increasing numbers today are getting those kinds of messages from the Commission. I would just like to simply say on this record that while I am not for quotas and I am not for the Government telling a private employer the specific employee he should hire, I do believe that any industry as public as broadcasting, whether it be commercial or noncommercial, public in the sense of involvement with the people, has got to have a commitment in this area for equal employment opportunity. I think it is right, I think it is moral and the legal law of the land, if I may put it in that fashion. I think the Commission is committed to it and will continue to enforce these rules very vigorously as we have done. We have done so in the context of continuing progress and I think that is the right way to go.

Mr. SHIBEN. May I add something there. As the Chairman indicated, over the last 3 or 4 years we have been imposing quite a few reporting conditions on broadcasters in the sense that they have to go out and solicit candidates for every job opening that they have during a certain period of time. These reporting conditions are usually done either on a quarterly basis or a semiannual basis and we have noticed that they have had a rather desirable effect on all the stations that we have been able to review in detail.

We review certain stations in detail depending on their employment profile. Then most of these stations, unless they have a good explanation, are usually granted reporting conditions which last most of their license term. The next time around we are not going to have much of a problem.

Mr. VAN DEERLIN. Well, that is encouraging.

Mr. SHIBEN. We may not hit everybody every time, but we have three EEO specialists now and we also use our broadcast analysts. As the Chairman indicated, this one aspect of the renewal application probably gets more concentration than any other aspect right now. We have approximately 10 people going over all those applications and concentrating on them.

Mr. WILEY. I might say also, Mr. Chairman, from the other side of the coin many broadcasters will come to me at various places where I speak and say, is the Commission no longer concerned with the quality operation; do they simply want numbers? That is not the case either. We expect the broadcaster has a right to have a qualified employee, but the point is are they giving an opportunity to minorities? Are they going through enough steps? Have they thought through the ways in which the Commission has suggested they might get some people who add diversity and richness to their broadcasts and better serve the public interest?

Mr. VAN DEERLIN. The licensee or the manager who comes to you with a question like that is copping out a little bit at the outset, don't you think so?

Mr. WILEY. I think so.

Mr. VAN DEERLIN. That is too easy to say, well, we want to have quality and therefore there is no place to start here.

Mr. WILEY. We want him to have a quality employee, but we think quality employees can come from people of all races, creed, color, and sex, and I think broadcasters that have tried this type of hiring have found that it has improved the whole broadcast operation.

Mr. VAN DEERLIN. If you fund a station operation in a mixed community of considerable size where there had not even been a start toward minority hiring, you would consider that practically an open and shut case of noneffort, would you not?

Mr. WILEY. I think we would find that that station needs further guidance on how to achieve nondiscrimination. Now that may come in a variety of different ways and that does not mean that we are going to take every station's license away that we find lacking. That is not the best way to do that.

Mr. VAN DEERLIN. That is putting the station in darkness to do that?

Mr. WILEY. Yes, the best way may be to try to suggest for a variety of regulatory purposes ways which he can improve the opportunities for minorities, and I think that is really what our system is attempting to develop.

Mr. VAN DEERLIN. You could certainly give a license for 6 months, couldn't you, instead of 3 years?

Mr. WILEY. We have given short-term renewals. That has been one of the sanctions. As Mr. Shiben indicated, we certainly have used that. We have conditioned license renewals. We have even placed stations in hearing and, as has been indicated in the testimony in this record, we have even gone further than that.

Mr. VAN DEERLIN. I have already abused the 5-minute rule. I do have another question or two but I will yield at this point.

Mr. Frey.

Mr. FREY. First, welcome, Mr. Chairman. I must say I basically agreed with the last statement—I think it is one of the most cogent that we have had. I don't want quotas. I think what we are looking for is an atmosphere in which people are not looking for a way out but they are finding people to do it and get involved, train them, and give them a chance. If you don't get people a start, they can never go anywhere.

Just a couple things I wanted to get to. In your statistics on page 10, you talk about the increase. What period of time did that increase refer to?

Mr. WILEY. 1971 to 1975, the latest date we have figures.

Mr. FREY. Also, isn't one of the problems that the figures have increased at the management level or the higher levels both in your female and minority?

Mr. SHIBEN. No, most of the increase is surprisingly in what you would consider the top job categories.

Mr. FREY. Could you for the record provide those statistics?

Mr. SHIBEN. I think we can.

Mr. FREY. I think that would be important. I cannot help but note, too, that the late Chairman Torbert Macdonald for a long period of time was very much involved in this. As you know, he was a rule pusher

in this area. Another question that came up during the hearings last year was one of the problems that both the radio and television groups testified having. They stated that after training and putting someone in a position they often lost them to those in radio, TV, and the networks that can pay more. There is a feeling that they are doing a good job but often fail to have it reflected because as soon as they get someone to a good level, they're gone. Do you have anything that either denies that or affirms this?

Mr. WILEY. I think that is the way of all flesh. I am sure there are whites also. White males move up to larger stations and better jobs and all the rest of it. I don't think they can be utilized. I think it is a point that——

Mr. FREY. Because it would make these more meaningful if there has been a turnover and an exodus up.

Mr. WILEY. One thing that is certainly something broadcasters can, should, and do cite to us sometimes to indicate compliance when their statistics don't look as favorable as we might hope is that they have had these people hired and they have been working there and they have been hired away. We take those into consideration.

Mr. FREY. Again if you have anything like that for the record, I think it would be important for us to know if those claims are true.

Mr. SHIBEN. I don't think we can supply any information unless we pull out all the renewal applications and start sending them up to you.

Mr. FREY. I don't want you to go to all that paperwork.

Mr. SHIBEN. What we can do, say we have a station on the annual employment report that takes us into a second look into their EEO program in the renewal application, oftentimes broadcasters will indicate they might have had a half-dozen minority employees over a period of 2 years.

Mr. FREY. So you look at it over the period of time?

Mr. SHIBEN. Yes, so it depends on the size of the station.

Mr. FREY. So they could have had a lot and they got hired with zero.

Mr. SHIBEN. Yes.

Mr. WILEY. The goose egg gets kicked out.

[The following letter was received for the record:]

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., August 23, 1976.

Hon. LOU FREY, Jr.,
House of Representatives,
Washington, D.C.

DEAR MR. FREY: This is in response to the matter you raised at the Equal Employment Opportunity hearings on August 10, 1976. As you requested, this response is being provided for the record.

In my testimony before the subcommittee, I stated:

> Predicated on our analysis of Annual Employment Reports since they were filed in 1971, we find a continuous trend of increasing minority and female employment in both commercial and noncommercial broadcasting. Minority representation in educational television broadcasting, for example, was initially 7.4% and is now 14.6%. Similarly, in educational radio, minority representation in 1971 was 5.7% and is now 12.1%. Overall female employment in educational television in 1971 was 27.1% and is now 31.6%, and, in educational radio, female employment has generally been around 28.4% during the reporting periods in question.

In this connection, you expressed the concern that the aggregate indices of minority and female employment progress may not be occurring at all levels of

noncommercial broadcasting. Predicated on the following minority and female participation rates for the top three FCC Form 395 job categories from 1971 through 1975, however, it appears that the general increasing participation of minorities and women in the public broadcasting industry is likewise taking place with respect to high level positions.

[In percent]

Job category	Female		Minority	
	1971	1975	1971	1975
Noncommercial television:				
Officials and managers	12.8	20.6	1.8	6.6
Professionals	23.3	34.0	6.1	12.2
Technicians	3.3	5.4	7.8	13.5
Noncommercial radio:				
Officials and managers	12.8	16.9	2.0	6.5
Professionals	22.2	27.0	4.4	12.6
Technicians	7.4	3.9	7.0	14.9

I trust that the foregoing resloves your question. Should you desire further information please let me know.

Sincerely yours,

RICHARD E. WILEY,
Chairman.

Mr. FREY. On the handicapped, for instance, your statement does not have anything on the number of handicapped persons employed at public broadcasting stations. Do you have anything that looks at and pushes this?

Mr. WILEY. We do not have currently any kind of an equal employment program for handicapped persons. They are not under the statutes that we have been following in this area. They are, however, human beings, and I would favor that the broadcasters take a look at that type of situation but we have no regulations in that regard.

Mr. FREY. Do you think there should be any kind of responsibility in this area?

Mr. WILEY. I think that is a public policy question that Congress would have to determine.

Mr. FREY. Of course, but you don't feel that anything on the books or anything that we have done gives you enough direction to look into this matter?

Mr. WHILEY. There is no statutory authority to create an affirmative action program as a requirement of our program for handicapped persons at this time that I am aware of.

Mr. FREY. Again, this may not be directly on the point, but PBS filed on November 6 a petition for rulemaking on the closed caption television for the impaired hearing. There are about 13 million Americans that could benefit. Where is this?

Mr. WILEY. Regarding the record on that matter, the final date for filing of reply comments was May 25 of this year and although we are attempting to speed up the process in the Commission, the Commission has not taken action and I would have to say that a delay from May 25 to this date is not unusual at the Commission. We hope to get this matter up to the Commission by the end of the year, if possible. The staff that was working on this item was pulled off to work on a VFH dropin before some of the Commissioners took their vacation in

August, but I would hope to get this closed captioning item back to the Commission at the end of the year. I agree with you that it is an important matter.

Mr. FREY. It is important, but we have mentioned a number of times before that the networks take notice of the 13 million people with hearing impairments and so very little provided for them.

Mr. Chairman, I would like permission to speak out of order a minute.

Mr. VAN DEERLIN. The gentleman operates very well out of order.

Mr. FREY. I guess I should ask permission to speak in order.

Mr. Chairman, I would like to direct a question to you about something we thought we would have a chance to do with our schedule. It is important that the blackout legislation that supposedly agreed to now sits in limbo as we approach close to the football season.

I noted a report in a recent magazine where the NFL only made, I guess, over $60 million this year for their broadcasting. It costs $250,000 for a 1 minute spot on the super bowl. I think a 1 minute spot on a Monday night is over $120,000. So you know they are doing pretty well.

The question, at least as I understood it personally in the conference where we saw it in the conference report was, would the FCC report indicate anything new in the report compared to the previous years that would indicate that the legislation we worked on, and had, was harmful to the NFL? The report has been cut now some 80 some days. It was my opinion that the report didn't show anything harmful; in fact, if anything else, it showed that there was really no economic damage whatsoever. I just would like to have your comments on the FCC report and if there is anything in that to show that we should not have blackout legislation.

Mr. WILEY. As you know, Mr. Frey, there has been a lot of confusion about the FCC report. Our report was made in response to a specific congressional directive and mandate to try to look at not the public policy behind the statute as to whether there should be such legislation or not but really what the effect has been of the legislation. We made no attempt to determine whether the legislation should be permanent or an extension of some years.

We made no recommendation to Congress in that regard. We merely took a look at what the effects of the legislation have been to date and I think the report speaks for itself. It is difficult to characterize a long report but I think it showed that. I think it would be fair to say, there was not a highly significant adverse impact upon the NFL professional football league at this point. We did show that there had been some increase in no shows as I recall in about four different cities, but I think that it was not enough at least for me to come to the Congress and argue, let's say be an advocate for a termination in the legislation. But whether there should be such legislation, whether such legislation should be permanent or not I think is basically a question which Congress in all due respect—it is up to you to decide.

Mr. FREY. I will comment on your no shows. Interestingly enough it showed the no shows. There were no no shows in cases where there were blackouts, so if anything you could argue that it helped them in that sense.

Just one other thing I would like to say, Mr. Chairman. It appears to me that the NFL is trying to make an end run on this thing. I think they obviously would like to kill the legislation and gut it any way they could. It affects not only the NFL but other sports, and I think the bill has been an effective one for many people around the country. The NFL has been granted an antitrust exemption. They only had $60 million last year and they are negotiating a new contract. They are going to get a lot more the next time. I think it is a pretty sad thing when they can effectively block legislation and/or hold it up.

I would certainly hope that this subcommittee which voted it out and the House which passed it overwhemlingly can put the pressure on to bring this legislation, which I thought was agreed to, about. It is just interesting sometimes to see how effective the NFL can be. Perhaps they should be as effective in dealing with their players and their salary averages—about $44,000 across the board. If we could read more about football on the sports page instead of the financial and labor pages, I think we would all be happier.

Mr. VAN DEERLIN. If the House of Representatives could be as effective as the National Football League.

The gentleman from Colorado.

Mr. WIRTH. Thank you, Mr. Chairman.

I guess when you were talking about affecting this National Football League you were not referring to the football team in Denver.

Mr. FREY. I am afraid I was not referring to the one in Tampa either.

Mr. WIRTH. I would like to associate myself out of order with the gentleman from Florida as well. I agree completely with his comments.

Mr. Wiley, getting back to the topic, unaccustomed as I am to sending credos in your direction, I did want to compliment you and the Commissioners for the extensive effort that you have put into this aggressive program.

Mr. WILEY. Thank you, Mr. Wirth.

Mr. WIRTH. I think it is a step in the right direction.

Mr. WILEY. I appreciate that.

Mr. WIRTH. I think that is atypical for me.

Mr. WILEY. I would like you to become more accustomed to that style.

Mr. WIRTH. Maybe after November one of us or both of us will say, "I don't have him to kick around any more."

Could you tell me what happened in the case of the Alabama educational television station? It was my understanding that at one point that license was going to be withdrawn and then was not, and that had to do in part with hiring practices.

Mr. WILEY. Yes. I am going to let Mr. Shiben answer that. I did not participate in that because I investigated it when I was General Counsel when I was with the Commission so I refrained thereafter from participating.

Mr. SHIBEN. Very briefly speaking, the licenses for the Alabama educational television network which, I believe, included eight licenses and one permit, were designated for hearing on several issues, primarily discriminatory programing and employment practices. The Commission voted to deny the licenses for all the stations primarily

on discriminatory programing grounds. The decision did not turn on employment practices.

The Alabama Educational Television Commission was invited to refile their applications for those facilities along with any other group or organization or individual that wanted to file for the licenses also. Since the licenses have been denied they have been granted authority to continue operating the station pending resolution of whether they should be allowed to retain some of them on refiling or if there are other applications that have been filed for the facilities who after a comparative hearing would be determined best qualified.

Mr. WIRTH. What kind of evidence is coming in showing that changes are being made?

Mr. SHIBEN. I can't go back in the record because I can't recall it but I believe that during the hearing even there was evidence that they had upgraded both their programing and employment practices but the case turned not on what you have done since you got in trouble, but what you did before you got in trouble. That is why they were denied in the first instance.

Mr. WIRTH. Could you provide us with any summary information you might have on that case without going through a great chore in terms of the paper trail?

Mr. SHIBEN. I am a little unfamiliar with the case now, too, since I have not looked at it since 1971 when it was designated for hearing.

Mr. WILEY. We can do that.

Mr. SHIBEN. We can supply you the information.

Mr. WIRTH. I think members of the subcommittee would be interested in having that.

Mr. WILEY. We will supply that.

[See letter dated August 23, 1976, p. 165, this hearing.]

Mr. WIRTH. How many people work for the FCC?

Mr. WILEY. We have allocated to us about 2,100 positions but we do not have the funds to hire all those positions simply because of the funding that we have received so we are down to around, I would guess, something over 1,900.

Mr. WIRTH. How many of those are professional positions?

Mr. WILEY. Mr. Wirth, I may have to supply this for the record. I was not prepared today but I can get this for you. If you want to give us a list of the questions you want, we will give you a profile of our situation.

Mr. WIRTH. What I would like to see is a breakdown of professional and nonprofessional positions and how within that, particularly the professional category, how that breaks down in terms of minorities. I am particularly interested in Chicanos and handicapped, if you have any figures on the handicapped. I know you discussed that with Mr. Frey, but if you have anything on that front I would appreciate it.

Mr. WILEY. I think we could probably get that for you.

Mr. WIRTH. We would like to have that.

[Testimony resumes on p. 249.]

[The following letter and attachments were received for the record:]

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

AUG 22 1975

3200

Honorable Timothy E. Wirth
House of Representatives
Washington, D.C. 20515

Dear Mr. Wirth:

This is in response to the matters you raised at the Equal Employment Opportunity hearing on August 10, 1976.

Initially, you requested a summary of the Commission's 1974 action involving the Alabama Educational Television Commission (AETC) and the status of the AETC's pending broadcast applications.

Please be advised that as a result of informal complaints from several area residents, the Commission on February 11, 1972, designated for an evidentiary hearing the license renewal applications of all eight educational television stations licensed to the AETC. The application for a license to cover a construction permit for a ninth station was also placed in hearing at that time. Among others, the issues specified in that hearing concerned whether the AETC had during the preceding license term (1967-1970) followed a racially discriminatory policy in its overall programming practices and whether it had made reasonable and good faith efforts to assure equal opportunities in its employment policies and practices. Also to be explored at that hearing was the program service broadcast by AETC to serve the needs of Alabama's citizens and the extent of the efforts being undertaken by that licensee to develop and present such programming in the future.

The Administrative Law Judge, in an Initial Decision released August 22, 1973, concluded that grant of the AETC applications would serve the public interest. Specifically, he found that while the AETC had ignored the special needs of Alabama's black citizens during the 1967-1970 license terms, such insensitivity was neither racially nor maliciously motivated and, upon becoming aware of its shortcoming in this regard, the AETC had acted effectively to remedy the situation. Pointing to the steps taken by AETC since 1970 to ascertain the needs of the black community as perceived by the members of that community and to redesign its program service, the Judge anticipated AETC's awareness of and responsiveness

to black needs would continue. Since he also found AETC to have made good faith efforts to comply with both the letter and the spirit of the Commission's equal employment opportunity regulations, he recommended a grant of the AETC applications. An appeal of this action was taken to the Commission by the complainants.

Upon consideration of the Administrative Law Judge's Initial Decision and a careful review of the evidence of record in this proceeding, the Commission concluded that AETC's conduct during the 1967-1970 license term fell so far short of the high standards expected of broadcast licensees as to warrant denial of the subject applications. While it did not disagree with the Judge's resolution of the employment discrimination issue, the Commission held in its decision of December 17, 1974, a copy of which is enclosed, that AETC had followed a racially discriminatory policy in its overall programming practices and had failed, through its pervasive neglect of Alabama's black population, to meet adequately the needs of the public it was licensed to serve. However, the positive steps taken by AETC both to insure black involvement in administrative and programming decision-making, as well as in the production and presentation of programs, and to eliminate the discriminatory practices which had been followed prior to 1970, demonstrated to the Commission's satisfaction that, despite its past misconduct, AETC possessed the requisite character qualifications to be a Commission licensee. Accordingly, AETC was found eligible to reapply for the subject facilities which it could continue to operate during the Commission's consideration of the AETC applications and any other competing applications that may be filed. No preference, stated the Commission, would accrue to AETC by reason of its prior status as a licensee and it was to compete on equal footing with all new applicants seeking the subject facilities.

On April 1, 1975, AETC reapplied for all nine facilities. Six of those applications were granted on October 21, 1975. The remaining three applications for facilities at Birmingham, Demopolis and Montgomery, Alabama, were designated for hearing with the competing applications of the Alabama Citizens for Responsive Public Television, Inc., on May 4, 1976. The issues in this proceeding seek to determine, inter alia, which of the proposals would on a comparative basis best serve the public interest. Included in this issue is an inquiry as to whether and to what extent the composition of the AETC and its staff has changed since the 1967-1970 license term. Formal hearing sessions with respect to these competing applications are expected to be commenced shortly.

With regard to personnel employed at the Federal Communications Commission, you requested information reflecting the number of professional and non-professional positions, and a further breakdown of those positions,

particularly the professionals, in terms of minorities. You also expressed an interest in Chicanos and the handicapped.

There are enclosed herewith the following:

1. % Professional Composition of FCC Workforce as to May 23, 1976
2. Occupational Code
3. Minority Codes and Sex by Pay Plan
4. Minority Codes and Sex by Occupation Code
5. Affirmative Action Plan for Employment of Physically Handicapped and Disabled Veterans 1977 plus related documents.

The above information is being furnished for the record. I trust that it is helpful. Should you need any further information, please let me know.

Sincerely,

Richard E. Wiley

Richard E. Wiley
Chairman

Enclosures

cc: Honorable Lionel Van Deerlin

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

FCC 74-1385
29210

In Re Applications of	
ALABAMA EDUCATIONAL TELEVISION COMMISSION	
For Renewal of Licenses for:	
Station WAIQ(ED-TV) Montgomery, Alabama	DOCKET NO. 19422 File No. BRET-69
Station WBIQ(ED-TV) Birmingham, Alabama	DOCKET NO. 19423 File No. BRET-5
Station WCIQ(ED-TV) Mt. Chesha State Park, Alabama	DOCKET NO. 19424 File No. BRET-7
Station WDIQ(ED-TV) Dozier, Alabama	DOCKET NO. 19425 File No. BRET-14
Station WEIQ(ED-TV) Mobile, Alabama	DOCKET NO. 19426 File No. BRET-87
Station WFIQ(ED-TV) Florence, Alabama	DOCKET NO. 19427 File No. BRET-130
Station WGIQ(ED-TV) Louisville, Alabama	DOCKET NO. 19428 File No. BRET-147
Station WHIQ(ED-TV) Huntsville, Alabama	DOCKET NO. 19429 File No. BRET-109
and	
For License to Cover Construction Permit for Station WIIQ(ED-TV), Demopolis, Alabama	DOCKET NO. 19430 File No. BLET-267

APPEARANCES

Marvin J. Diamond, Corwin R. Lockwood and Richard Rodin (Hogan & Hartson) on behalf of Alabama Educational Television Commission; Ellen S. Agress and Frank W. Lloyd (Stephen Suitts also appeared at the oral

argument) on behalf of Rev. Eugene Farrell, Linda Edwards, Stephen Suitts and William D. Wright; and Walter C. Miller and P. W. Valicenti on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

Adopted: December 17, 1974 ; Released: January 8, 1975.

Commissioner Glen O. Robinson, for the Commission: Chairman Wiley not participating; Commissioners Lee and Reid dissenting and issuing statements.

Background

1. Before the Commission are applications of the Alabama Educational Television Commission (AETC) for renewal of licenses for the license term commencing April 1, 1970, for its eight educational television stations and for a license to cover the construction permit for a ninth station in Demopolis, Alabama.

2. The Alabama Educational Television Commission was set up by the Alabama State legislature in 1953 and is the licensee for all state-owned and operated noncommerical television stations. All programming is simulcast over the several stations; however, responsibility for the production and acquisition of programming is vested in a number of production centers which are autonomous as to programming but depend on the state either directly or indirectly for financing. The heads of the institutions with which the production centers are affiliated form a Program Board which coordinates the activities of production centers. The production centers have discretion to acquire programming through affiliation with the National Education Television network, purchase from other sources or production by themselves, and with the exception of the Montgomery Studio Center (which was the only production center completely funded by and under the direct control of AETC), their relationship with the AETC is purely contractual. Nevertheless, the ultimate control and responsibility for all program operations remains in the hands of the AETC which has the power to revoke all such delegations of its authority. The AET Commissioners are not active in programming decisions; that responsibility, through the implementation of the AETC Program Policy (see Initial Decision para. 5), has been delegated to the General Manager and his subordinate, the Program Coordinator, who coordinate and schedule the programs made available by the production centers. A considerable amount of the

AETC's programming is devoted to in-school instructional broadcasts. The AETC has chosen to delegate responsibility for the content of this programming to the Alabama State Department of Education (SDE), although the actual production or acquisition of programming is performed by the production centers. The AETC retains only a limited role in the production of in-school programming, confined largely to scheduling and technical assistance. The Citizens Advisory Committee which was established by the AETC to keep it informed of the public's reaction to its programming and to suggest improvements, was inactive during the license period.

3. This proceeding grew out of informal complaints about racial discrimination in programming and employment practices during the preceding license term (1967-1970) filed by Reverend Father Eugene Farrell, S.S.J., Linda Edwards, and Steven Suitts. Initially, the Commission concluded that "there is no substantial problem warranting further inquiry," and renewed the licenses. (25 FCC 2d 342 (1970)). However, on petitions filed jointly by Edwards, Farrell and Suitts, and jointly by Anthony Brown and William D. Wright, 1/ the Commission reconsidered its order granting the renewals and designated the applications for a hearing on the following issues (33 FCC 2d at 513):

1. To determine whether the Alabama Educational Television Commission has followed a racially discriminatory policy in its overall programming practices.

2. To determine whether the Alabama Educational Television Commission has broadcast programming serving the needs of Alabama's citizens.

3. To determine the extent of efforts being undertaken by the Alabama Educational Television Commission to develop programming to serve the needs of Alabama's citizens.

1/ The petition of Anthony Brown, filed both individually and as representative for the National Association of Black Media Producers, and William Wright, individually and as representative for Black Efforts for Soul in Television, was dismissed in the designation order because no pre-grant complaint had been filed and good cause had not been shown for the failure to participate in the earlier stages of the proceeding. However, subsequently, on April 28, 1972, the ALJ authorized the intervention of William D. Wright as representative for Black Efforts for Soul in Television (FCC 72M-527). Wright has joined with Edwards, Farrell and Suitts in filing exceptions to the Initial Decision.

4. To determine whether the Alabama Educational Television Commission has made reasonable and good faith efforts to assure equal opportunities in its employment policies and practices in accordance with Section 73.680 of the Commission's Rules.

5. To determine whether, in light of the evidence adduced pursuant to the foregoing issues, a grant of the Alabama Educational Television Commission's above-captioned applications would serve the public interest, convenience and necessity.

4. In an Initial Decision (I.D.) released August 22, 1973, Administrative Law Judge (ALJ) Chester F. Naumowicz, Jr., recommended renewal of the licenses and grant of the license to cover the construction permit. Except as modified in this Decision and in our rulings on exceptions contained in the Appendix, the findings of the ALJ are affirmed. However, after a careful review of the hearing record, the exceptions to the Initial Decision, the supporting and opposing briefs thereto, and having heard oral argument, we draw different inferences from his findings, on the strength of which we conclude that the subject applications must be denied.

The Issues

5. At the outset, it is necessary to correct certain erroneous assumptions made by the ALJ which we believe seriously misconceive the law and the policy regarding the burden of proof in license renewal and the law and policy in regard to licensee responsibilities.

6. First, the ALJ appears to have misconceived AETC's obligations as a renewal applicant in this proceeding. In commenting upon several disputed factual issues, the ALJ evidently assumed that the burden was upon petitioners to establish that adverse findings were warranted. 2/ However, Section 309(e) of the Communications Act imposes upon the

2/ For example, the ALJ stated at paragraph 14 that "there is no indication in the record" that AETC has ever had a formal policy of discrimination; that "the record is inadequate to support" a finding that AETC applied an inconsistent policy in pre-empting black oriented programming (para. 22); and "nor does the record indicate" that racial considerations affected AETC's programming decisions (para. 47).

renewal applicant the burden of showing that renewal is in the public interest. AETC as renewal applicant was obliged to show affirmatively with respect to each designated issue that renewal of its license would serve the public interest. *Orion Broadcasting Company*, 34 FCC 2d 1036 (1972). *Office of Communication of the United Church of Christ v. FCC*, 425 F. 2d 543 (D.C. Cir.1969). AETC's obligation in this connection was underscored by our designation order, which specifically placed both the burden of coming forward with evidence as well as the ultimate burden of proof (or risk of non-persuasion) upon AETC. 33 FCC 2d at 514.

7. Second, we conclude the ALJ erred in giving decisional weight to his finding that "neither the State of Alabama nor the AETC has any direct control over the programming they acquire or produce, or any authority to regulate the policies under which they operate" (I.D. para. 6); and that the "production or acquisition of programming has been placed in the hands of entities over which the AETC has little legal control" (I.D. para. 13). Assuming that these statements are factually correct--and petitioners contend that they are not--they are immaterial. As a matter of law and public policy, AETC has ultimate responsibility for any inadequacies in station operations during its license term regardless of the reasonableness of its delegation of programming responsibility to outside agencies. As we have repeatedly emphasized, a licensee cannot escape responsibility for the actions of those to whom it delegates programming responsibilities simply because it was unaware of such actions or was misled by an employee. 3/ Thus, in *Continental Broadcasting, Inc.*, 15 FCC 2d 170 (1968), *petition for reconsideration denied*, 17 FCC 2d 485 (1969), we held that a station manager's gross misconduct and fraud on the Commission must be imputed to the licensee who had failed to exercise adequate control and supervision over the management and operation of its station consistent with its responsibilities as a licensee, and in *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913, (197), we stated, "licensees are responsible for the selection and presentation of program material over their stations, including advertising matter, as well as acts of omission of their employees." A licensee is similarly responsible for the content of the programming

3/ We accept that, in principle, there may be instances of "frolic and detour" beyond the scope of reasonably forseeable employee activity, where the licensee, although formally responsible for an employee's misconduct, could escape official sanction or severe censure by showing that its supervision was reasonably diligent, in all the circumstances of the case. Such a defense is clearly inapplicable, however, where, as here, a protracted course of licensee conduct suggests that as a practical matter, it has exercised virtually no independent judgment with respect to programming to meet the needs and interests of its community of license.

it broadcasts and cannot avoid its duties as a licensee by averring unfamiliarity with the programs it has broadcast on its designated frequencies. *License Responsibility to Review Records Before Their Broadcast*, 28 FCC 2d 409 (1971), *clarified*, 31 FCC 2d 377 (1971), *aff'd sub nom. Yale Broadcasting Co. v. FCC*, 478 F. 2d 594 (D.C. Cir. 1973), *cert. den.* 94 S. Ct. 211 (1973); *TransAmerica Broadcasting Corp.*, 20 FCC 2d 469 (1969). We emphasized this fundamental principle of licensee responsibility at an earlier phase of this case in refusing to designate certain additional issues concerning AETC's programming operations and alleged violations of the terms of its broadcast authorizations and of Section 310(b) of the Communications Act:

> The AETC, of course, in carrying out its functions as a licensee, may delegate certain responsibilities just as any other broadcaster or corporate entity. However, the AETC, as licensee, also has ultimate control over every aspect of its broadcast operations; consequently, although the AETC may have delegated certain program functions to its Program Board or program production centers, these facts do not alter the rights vested in the AETC to revoke such delegations and to exercise full responsibility over its programming operations. 33 FCC 2d at 508.

Therefore, AETC cannot be excused for any deficiencies or improprieties in programming policies or practices merely because it delegated certain aspects of its programming to other entities.

Discriminatory Programming

8. The ALJ found that during the license period in question AETC "displayed a pattern of minimal integrated programming" 4/ at the beginning of the period but that it was substantially increased toward the end. (I.D. para. 17). He also found that the paucity of black-oriented programming could not be attributed to nonavailability since NET offered a substantial amount of such programming, but that "AETC elected to broadcast virtually none of these programs" (I.D. para. 19). In a state whose black population is approximately 30 percent, this obviously presents an issue of grave importance. The ALJ did not give it sufficient weight.

4/ "Integrated programming" included all programs in which at least one black person appeared on the air.

The ALJ concluded that this dearth of black-oriented programming resulted from AETC's desire to provide programming of value to everyone which "blinded it to the possibility that some of its viewers might have special needs" rather than from a design to discriminate on the basis of race, and he resolved the issue favorably to AETC. This conclusion was reached, in our view, because of the ALJ's misapplication of the burden of proof, the undue weight which he accorded the broadcast of some integrated programs, and his unwarranted emphasis on the lack of evidence of a "formal" policy of racial discrimination or of instructions that racial discrimination should be practiced. (I.D. paras. 14, 16, 46). As we have already emphasized, the burden of proof is on the renewal applicant to show that a grant is in the public interest. With respect to the significance of the evidence concerning integrated programming and the need for proof of a formal policy of discrimination, we have carefully considered AETC's contentions in support of the ALJ's findings, but we find them to be without merit. While it is true that there is no evidence that *direct orders* were ever issued to discriminate on the basis of race, the absence of such evidence is hardly dispositive. A policy of discrimination may be inferred from conduct and practices which display a pattern of underrepresentation or exclusion of minorities from a broadcast licensee's overall programming. *Radio Station WOKY, Inc.*, 27 FCC 2d 993 (1971). 5/ In light of the facts of record set forth below, we find a compelling inference that AETC followed a racially discriminatory policy in its overall programming practices during the license period.

9. At the hearing, counsel for AETC and petitioners stipulated into evidence information concerning the extent to which each program was integrated (i.e., at least one black person appeared on the program), as well as information concerning the production center, title, duration, and other details of programs telecast in each of five

5/ Under this so-called "rule of exclusion," circumstantial evidence of racial discrimination--such as substantial underrepresentation of a discriminated class--rather than direct or explicit proof of discriminating acts has long been recognized as sufficient to establish a *prima facie* case. *Norris v. Alabama*, 294 U.S. 587 (1935); *Alabama v. U.S.*, 304 F. 2d 583 (5th Cir. 1962) *aff'd per curiam*, 371 U.S. 37 (1962). If it were otherwise, even quite aggravated instances of racial discrimination would often have to go without redress. Of course, we do not mean to imply that circumstantial evidence equally capable of innocent or guilty explanation will necessarily be given its most damning interpretation. But where, as here, other evidence tends to confirm the suspicion of race prejudice, we will not strain to blink away the implication. Indeed, given the fact that AETC has the burden of proof on this issue, we do not see how we could do otherwise.

weeks during the license period. Petitioners assert, and we agree, that the appearance of a black person on a program does not necessarily mean that the program is "integrated" in any meaningful sense or that integrated programming is the sole test of discrimination. Nevertheless, the evidence is useful as one indication of the effect of AETC's programming policies. As we stated in *Citizens Communications Center* (25 FCC 2d 705, 707, (1970)):

> Although the licensee has great discretion, that discretion is, of course, limited by the necessity to act under policies consistent with the public interest. Thus, a serious question would be presented if in its overall programming a licensee ignored the needs of his community, or, for example, arbitrarily refused to present members of an ethnic group, or their views. Refusal to present members of such a group, either as such or in integrated situations with members of other groups, would constitute discrimination in programming.

10. The stipulated five sample weeks disclose the following proportions of integrated programming:

Week	Percentage
October 1 to 7, 1967	.7%
June 30 to July 6, 1968	1.5%
November 10 to 16, 1968	.7%
December 14 to 20, 1969	8.2%
January 4 to 10, 1970	12.7%

The sample weeks clearly demonstrate a pattern of negligible integrated programming during the first two years of the license term. Furthermore, although the percentage of integrated programming increased during the final year, this increase was due almost entirely to the frequent broadcast of "Sesame Street", a non-locally produced program for pre-school children. Five of the six integrated hours during the December 1969 sample week, and nine of the nine and one-half hours of integrated programming during the January 1970 sample week consisted of "Sesame

Street." 6/ Furthermore, there is no evidence of record that the in-school instructional programming which was locally produced contained any significant amount of integrated programming. Inferences of discriminatory practices may justifiably be drawn from the lack of integrated programming; a heavy burden was accordingly placed on AETC to overcome this adverse evidence. *Office of Communication of the United Church of Christ v. FCC*, 359 F. 2d 994, 1007-08 (1966). Not only did it fail to bear this burden, but, on the contrary, evidence adduced by petitioners lends further support to the view that the deficiencies in AETC's programming were not the product of inadvertence alone.

6/ "Sesame Street" is integrated--it uses both black and white actors--and it is designed especially to meet the needs of culturally disadvantaged pre-school children, a class which we may assume to include a large number of the state's black children. But, standing by itself, "Sesame Street" can hardly bear the weight that AETC would put upon it. Pre-school children are only a small part of the black--or white--population. The needs and interests of this small group almost surely does not coincide with those of older black residents of the state, whose numbers--and whose history--entitle them to special consideration, and whose neglect gives rise to special suspicions. Although the AETC has introduced evidence detailing additional integrated programming broadcast during the license term (AETC Exhibit 1; see also I.D. at para. 16), we note that counsel for AETC has stipulated that the weeks were chosen to provide a "random view of what /AETC's/ typical weekly programming is." While we have considered all evidence of AETC's programming contained in the record, we believe that the sample weeks provide the most reliable indicator of the extent to which AETC has actually broadcast integrated programming. In any event, this additional integrated programming--which AETC acknowledges includes all the further integrated programs revealed in its records--amounts to only 46 hours and 45 minutes of programming, or some .5% of the over 10,000 hours of programming broadcast during the license term. Furthermore, nothing in the record shows that the sample weeks are unrepresentative or unreliable evidence of typical AETC programming at different times during the license term.

11. It is not surprising that the percentage of integrated programming during the license period was minimal, given the membership of the various boards and committees which were responsible for the production and broadcast of programs on Alabama's network of educational television stations. There were no black AET Commissioners, no black AETC professional staff, and no blacks on the Program Board during the license period. The production centers were all located at predominantly white institutions and the record establishes that there was no significant black involvement in the preparation of programming at those production centers. Likewise there were no blacks on the Curriculum Committee, an organization created by SDE for the purpose of planning and coordinating instructional programming; and, as the ALJ found (I.D. para. 18), no integrated in-school programming was produced locally. The record indicates that neither the Curriculum Committee nor AETC, which was represented on that Committee, made any serious efforts to consult with blacks in the planning or production of such programs or to obtain the participation by blacks in their presentation on the air. Dr. Frankie Ellis, a black woman who has chaired the Department of Teaching Disciplines at Tuskegee Institute since 1966, testified that she knew of no black teacher who had been invited to appear as an instructor on the AETC network, and that no black members of the faculty at Tuskegee Institute have been solicited by the SDE to help prepare curricula for in-school instructional programming. This evidence was uncontradicted by AETC.

12. AETC's failure to take affirmative steps to prevent the exclusion of blacks from participation in its instructional programming becomes particularly significant in view of the considerable controversy and numerous Federal court opinions concerning discriminatory practices in the Alabama state educational system prior to and during the license term. 7/ Since AETC had turned over responsibility for a considerable portion of its educational programming to the State Department of Education (SDE), it was incumbent on the licensee to take adequate precautions against the possibility that discrimination would take place in that sector of its programming. Yet Raymond Hurlbert, general manager of AETC, testified that he was only "vaguely aware" of the racial desegregation controversy in the Alabama school system during the license period, and that the AETC took no steps to investigate the

7/ The following cases discuss the situation which existed in Alabama in considerable detail:

Lee v. Macon County Board of Education, 267 F. Supp. 458, *aff'd sub nom. Wallace v. United States*, 389 U.S. 215 (1967).

Lee v. Macon County Board of Education, 283 F. Supp. 194 (1968).

Lee v. Macon County Board of Education, 317 F. Supp. 103 (1970).

legal controversies surrounding the SDE. We think it is literally incredible that a man in Mr. Hurlbert's position would be unaware of the situation which prevailed in the administration of the Alabama school system during this period. The common sense of experience compels the conclusion that AETC's failure to insist upon the participation by blacks in the planning, production, and broadcast of instructional programs was due to its agreement with, and its acceptance of, SDE's exclusionary policies and practices. B/

13. Of course, petitioners' showing could have been rebutted by a satisfactory explanation for the lack of black involvement at AETC. Evidence of efforts to recruit black participants and of the nonavailability of qualified blacks are well-recognized defenses to a *prima facie* case established under the rule of exclusion. *Norris v. Alabama*, 294 U.S. 594; *Brooks v. Beto*, 366 F. 2d 1 (5th Cir. 1966). Yet, despite the fact that under our designation order it had the burden of proceeding and of proof on this issue, AETC offered only the statements of its general manager disclaiming any intention to discriminate and denying ever ordering his subordinates to so discriminate. Under well-established precedent in racial discrimination cases, the charge of racially discriminatory programming practices supported by reliable evidence of exclusion which amounts to a *prima facie* case of discrimination cannot be rebutted with such unadorned denials. *See Brooks v. Beto*, 366 F. 2d 1, 10 (5th Cir. 1966); *Smith v. Texas*, 311 U.S. 128, 1321 (1940); and *Norris v. Alabama*, *supra*.

14. Finally, it is clear that the AETC took steps which effectively precluded the broadcast of virtually all black-oriented network programming that was made available to it by the National Educational Network (NET) during the license term. While rejecting some network programs for the valid reason that they contained obscene or vulgar matter, AETC took an unusually harsh attitude in the application of its obscenity standard where black programming was concerned. Thus, a segment of the

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B/ If, in fact, AETC (through its general manager) were unaware of the school situation in this period, it would reflect adversely on its qualifications to continue as a Commission licensee. The charges of discrimination against blacks in the Alabama school system received not only local but nationwide attention. It is difficult to see how a licensee could claim to not to be at least generally aware of such difficulties with the SDE without thereby confessing itself to be manifestly inept. Ineptness does not excuse a broadcast licensee's failure to meet its obligations to the public interest. *See The Grant Broadcasting Co.*, 21 FCC 2d 792 (1970).

series, "Black Journal," was deleted ostensibly because it contained "obscene" material. Nevertheless, another program not of special interest to blacks, "The Battle of Culloden" was broadcast even though it contained language of comparable coarseness. 9/ The next segment of this series was deleted because of its "limited value," and while the record does not disclose whether subsequent segments were previewed, none was thereafter broadcast during the remainder of the license term. In this connection, however, it is pertinent to note that the segment offered by NET on February 23, 1970, during the license term, was not broadcast until September 7, 1970, approximately five weeks after the filing of petitions for reconsideration of the Commission's order granting AETC's renewal applications. Another series, "The Show", was preempted after only one segment because of a notice of profanity in upcoming segments. In neither case was any attempt made to secure permission from the NET to exercise AETC's contractual right to "blip" out offending matter. 10/

9/ In "Black Journal" the words and phrases which were considered as precluding its broadcast were the following:

> "Damn;"
> "Go to hell;"
> "rats leaving crap in the corner;"
> "Nixon is trying to strangle the second reconstruction;"
> "Malcom X was a dissenter and they (the Establishment) killed him."

"The Battle of Culloden," an English historical drama, used the word "bastard" twice, and "friggin" once, and Mr. Hurlbert conceded at the hearing that he considered such language obscene.

10/ AETC asserts that Mr. Hurlbert misunderstood the language of the NET affiliation agreement under which a station could request prior permission from NET to edit out offending words or segments of programs without rejecting the entire show. Nevertheless, AETC conceded that the contract clearly empowers the station to secure permission to edit programs:

> "All N.E.T. programs will be broadcast by Station in full without any deletions or other changes, and station will not omit or replace any portion or segment thereof without prior consent from N.E.T."

15. Other policies and unexplained decisions similarly worked to keep virtually all black-oriented programs off the AETC network. 11/ Thus, the record is silent as to the explanation for AETC's decision not to carry the NET special on a Denver Black Panther trial. The series "On Being Black" was not broadcast and the explanation offered by Mr. Hurlbert for not doing so is clearly unsatisfactory. In a letter to the Commission dated February 23, 1970, Mr. Hurlbert advanced as a reason for its deletion that obscene matter was included in a segment offered for October 8, 1969. However, the decision not to broadcast the series was made some time prior to September 22, 1969, and the office memorandum which reflected the decision stated that it would therefore "be unnecessary for us to preview the feed regularly scheduled for Wednesday mornings, 10:00-11:00 a.m., effective September 24." Consequently, it appears that the programs were not reviewed before the decision to delete the series was made; and, in any event, no explanation was made as to why the September 24 and all other segments, excepting the October 8 one, were not carried. The "Soul!" series was not broadcast because of a conflict with another NET series, "Firing Line," but no effort was made to reschedule the programs for another time. On the basis of the foregoing, the ALJ's conclusion that network programming was not rejected on the basis of racial considerations cannot stand. Any one of these decisions, taken by itself, might reasonably be regarded as a valid exercise of a licensee's discretion as to scheduling or program content.

11/ The program coordinator decided whether a particular NET offering would be aired and his decision was approved explicitly or implicitly by the general manager. None of the persons who served as program coordinator during the license term was called to testify and Mr. Hurlbert had only a limited recollection of the specifics surrounding the decisions to preempt NET programs. However, several memoranda were placed in evidence which provide the only indication of the basis for the program coordinator's decisions.

But taken together, and unmitigated by an innocent explanation, these preemption decisions point irresistably toward a conclusion of racial discrimination. And this conclusion is fortified by the obvious lameness of AETC's "obscenity" rationale and the other related arguments advanced in support of its decisions concerning network programming.

16. The systematic exclusion of blacks and of programming designed to serve their distinctive interests is thus demonstrated by the substantial evidence adduced by petitioners that blacks rarely appeared on AETC programs; that no black instructors were employed in connection with locally-produced in-school programs; and that unexplained decisions or inconsistently applied policies forced the preemption of almost all black-oriented network programming. In addition to the paucity of integrated programming, the record indicates that there was virtually no black input into the programming process and no attempt during the license term by AETC to solicit black input through any of its decision making bodies. These factors, together with direct actions undertaken by AETC's management in rejecting almost all black-oriented NET programming, bear witness to and illustrate the policies that tainted the licensee's overall performance during the license period. Although AETC cites its listing of integrated programming aimed at black interests as affirmative evidence of nondiscriminatory policies, we hold that it is insufficient to refute petitioners' *prima facie* case. The stipulated sample weeks, which included little integrated programming, furnished, in our opinion, the most reliable evidence of the extent to which a typical week of AETC's programming was integrated. To the extent that scattered instances of other integrated programs were offered into evidence, they were too few in number to be outcome-determinative. Furthermore, evidence of merely *isolated* participation by members of the unjustly excluded class will not defeat a *prima facie* case of discrimination based on systematic exclusion. *Todd v. Southern Pacific Company*, 329 U. S. 217 (1946). The limited examples of black involvement in AETC's programming we regard as amounting to no more than isolated participation; they are not sufficient to overcome the taint of discrimination which the record indicates belongs to AETC's overall programming practices.

17. In sum, the serious underrepresentation of blacks both on the air and at the production and planning levels, together with the overt actions of the licensee in rejecting most of the black-oriented programming available to it, constitutes persuasive evidence that racially discriminatory policies permeated AETC's programming practices. Accordingly, we conclude that AETC has failed to carry its burden of proving nondiscrimination. This resolution of the issue must be accorded substantial weight in determining whether renewal would serve the public interest.

Programming to Meet the Needs of the Citizens of Alabama

18. In considering whether AETC's programming served the needs and interests of its service area during the license term, the ALJ found that neither AETC nor its production centers made any affirmative effort to include blacks in the program selection process; that AETC was unaware of the unique needs of its black viewers for specialized educational programming; and that little programming to meet those needs was broadcast (I.D. paras. 24, 25, 49-52). 12/ We therefore resolved the issue against AETC. However, he also held that AETC's programming failures resulted, at least in part, from its reliance "upon a variety of reputable educational institutions" and that such failures were "the product of ignorance rather than malice" and he found these factors mitigated the weight to be accorded to this adverse conclusion. We agree with the ALJ's conclusion that AETC failed to sustain its burden on this issue; we differ from him only in attaching greater significance to its failure to do so.

19. Because AETC's reliance on the SOE and the production centers cannot excuse its failure to meet its obligations as a broadcast licensee, our primary concern must be, not whether AETC was justified in placing so much reliance on the production centers, but whether its needs ascertainment was sufficient and its programming responsive. The preponderance of the evidence adduced by petitioners establishes that

12/ We must reject AETC's contention that the ALJ erred in his treatment of this issue by focusing attention on whether the licensee failed to serve the needs of blacks, rather than whether AETC's overall performance served the needs and interests of all of Alabama's citizens, black and white. Of course, AETC's overall performance must be considered, but it blinks reality to suppose that all the important needs and interests of Alabamians, whether black or white, coincide. The sufficiency of a licensee's service to a distinctive minority which constitutes approximately one-third of the whole population of the community must obviously be taken into account in evaluating the licensee's "overall" performance.

it was not. Petitioners' expert witnesses testified that the educational needs of black students are unique and not served by all educational programming even if that programming is of a very high caliber. 13/ In particular, petitioners have demonstrated that cultural and economic differences between the black and white population 14/ in Alabama have created

13/ Dr. Ellis testified that innumerable studies have pointed up broad discrepancies between Alabama's black and white communities in educational achievement due to past histories of racial segregation and economic deprivation. She emphasized that in order effectively to serve the needs of black students in Alabama, educational television must offer programming aimed at compensating for the educational lag of black students. Particularly, she noted that black children have special needs for black characters and teachers to emulate and identify with in order to help them develop positive attitudes toward learning and toward themselves. Likewise, Dr. Edgar Epps, a professor of urban education at the University of Chicago, testified that black Alabamians have developed cultural patterns and have educational needs that differ substantially from those of whites. Dr. Epps stated that the:

> . . .systematic exclusion of materials on black experience from school curricula and from media of communications can have a negative impact on the self-image of black children and adults which may lead to lowered aspirations and a lessening of motivation to strive for success in school and in later life.

14/ For example, while 15.7% of Alabama's white population were below the poverty line in 1969, 52.9% of the black population were below that level. Among Alabama's white population, 47.7% had completed four years of high school as of 1970, compared to 21.6% of the black population.

special needs which could not be served by AETC's avowed programming policy which considered race to be an irrelevant factor in designing its offerings. To this end, Mr. Ulysses Byas, the Superintendent of the Macon County, Alabama Board of Education, testified that it was his experience that the majority of black students in Alabama enter school less well-prepared than white students to perform successfully in the classroom and that, in order to be effective, an educational system must act to deal with these different levels of preparation. Petitioners have thus convincingly shown the need of Alabama's black population for effective educational programming through "compensatory programming, programming to which blacks can relate and programming relating to black history and culture," and have demonstrated that integrated programming can be but one factor in meeting these needs. 15/

20. The record also indicates that AETC failed properly to police its programming decisions in order to ensure that they were responsive to black community needs. Specifically, AETC failed to evaluate the in-school programming produced by the State Department of Education and provided no specific guidelines for program selection by the production centers. AETC has not rebutted petitioner's evidence and, in fact, acknowledges that during the license term, it was unaware of the needs of blacks and that it failed to consider those needs. In the context of this proceeding, AETC's concedued ignorance of the needs of the substantial black population in Alabama, which it advances as the cause for the neglect of this minority group, cannot be accepted in mitigation of its culpability. We think AETC's professed ignorance of the programming needs of Alabama's black citizens is related to its custom, previously outlined, of excluding blacks from the planning and production of the programs broadcast over its network. It would outrage both public policy and common sense to allow this deliberate course of racial discrimination as a defense against some of its likely consequences. 16/

15/ While petitioners' evidence focused primarily on the deficiencies of AETC's service to black students via in-school instructional programming, we note that AETC devoted a considerable portion of its programming to such broadcasting. 33 FCC 2d at 50. Further, AETC has offered nothing to show how its other programming was aimed at serving black adults, and has failed to account for its decision to preempt virtually all network programming that was designed for black adults.

16/ Robert Dod, director during the license period of the Montgomery Studio Center, the production center funded by and under the direct control of AETC, testified that he knew of no black instructors appearing on the in-school instructional programming. The testimony of the general manager, Mr. Harlow, was to the effect that, although AETC was unaware of the unique needs of black citizens, it tried to serve all the State's citizens by its educational programming and believed that it was serving black needs through quality educational programming.

21. Furthermore, the Commission has consistently held that the failure to ascertain and serve the special needs and interests of sizable minority groups in its service area is, in itself, a failure of licensee responsibility irrespective of any intent to discriminate. *Suburban Broadcasting Co.*, 26 FCC 1135 (1966); *Chapman Radio and Television, et al.*, 24 FCC 2d 282 (1970). A licensee's failure to ascertain and serve the needs and interests of some 30 percent of its community's residents is fundamentally irreconcilable with the obligations which the Communications Act places upon those who receive authorizations to use the airwaves. *Office of Communication of the United Church of Christ v. FCC*, 425 F. 2d 543 (D.C. Cir. 1967), *aff'd Red Lion Broadcasting Co. v. FCC*, 395 U. S. 367 (1969). Although AETC as a noncommercial broadcaster was seeking to provide a particularized service to the citizens of Alabama--viz., educational programming--its responsibilities to minorities within its service area are no less important than those of commercial broadcasters. 17/ Both types of stations do, of course, use a valuable public resource, for which privilege they are rightly expected to serve the needs of the public. This obligation includes not merely service to the general public but also service to significant distinctive minority interests which are not and cannot be as fully served by commercial stations. We recognize, of course, that the Commission's present regulations do not require noncommercial educational stations to pursue formal ascertainment procedures to ascertain community needs. 18/ Nevertheless, the Commission has indicated that educational stations are not thereby relieved of the obligation to become aware of community needs and to program to meet such needs. Based on the history of legislative expressions of intent and the Commission's own prior statements concerning educational television, we have held that noncommercial

17/ Indeed an argument can be made that the educational broadcaster has a very special obligation to serve needs over and above what is expected of commercial stations inasmuch as the educational broadcaster not only receives the benefits of the public spectrum but also is supported by general public funds, the rationale for which is providing special services to the community. We do not put this forward as a special ground for decision here but only as a point that corroborates our finding that the licensee has not lived up to even minimal licensee standards.

18/ A rulemaking proceeding (Docket No. 19816) is currently pending to consider establishment of formal ascertainment requirements for educational broadcasters similar to those required for commercial broadcasters. *Ascertainment of Community Problems by Educational Broadcast Applicants*, 42 FCC 2d 690 (1973).

broadcasters "have an affirmative duty to determine the needs and interests of their communities and to program in such a way as to meet those ascertained needs." *Accountability of Certain Problem by Educational Broadcasters*, 42 FCC 2d 380, 403. Indeed, we have noted that the strength of educational television derives "from its ability to be innovative and to serve significant minority tastes, needs and interests." *Ibid.* Because of the importance of the service which it performs -- whether it broadcasts instructional programming or, as is becoming increasingly the case, public programming -- educational television has a paramount obligation to endeavor to serve significant minority needs in its service areas. Therefore, despite the absence of an affirmative requirement to ascertain community needs, the ALJ's finding that AETC was unaware of the unique needs of its black viewers must reflect adversely upon AETC even if such unawareness was due only to negligence or ignorance.

21. We do not hold that the needs of a minority group may only be satisfied by programs designed specially for that group. Programs having a wider range of appeal may well suffice to satisfy the licensee's obligation of service to demographic minorities in its community of license. But at the same time we cannot accept that appeal to the general average of tastes, intellects, problems, needs and interests is the one and only test for programming decisions to be made. A licensee cannot with impunity ignore the problems of significant minorities in its service area. As we made clear in *Cox-Eagle Broadcasters, Inc.*, 33 FCC 2d 1001, 1003 (1972), "[t]he problems of minorities must be taken into consideration by broadcasters in planning their program schedules to meet the needs and interests of the communities they are licensed to serve." The cases upon which AETC relies as supporting the sufficiency of its programming are distinguishable since none of them presented a situation where the licensee did not undertake in some reasonable manner to serve the needs of minorities in its service area. This, in *WGBH Broadcasting Corp.*, 30 FCC 2d 993 at 999 (1971), for example, is specifically noted that the licensee had made "reasonable efforts" to broadcast programs of particular interest to minorities, and that programs of particular interest to minorities had been carried periodically. Likewise in *Channel Eleven Broadcasting Corporation*, 30 FCC 2d 62, 65 (1972), the Commission noted that the test was whether the licensee had made a reasonable effort to deal with the problems of its service area and,

on the basis of the information submitted, the Commission found that the licensee had done so. In the instant case, however, we have found that AETC excluded blacks from the decision-making process, that it did not take the trouble to inform itself of the needs and interests of a minority group consisting of 30 percent of the population of the State of Alabama, and that, as a result, it virtually ignored the programming needs and interests of that minority group. A finding that it made reasonable efforts to ascertain and to deal with the problems of the black minority in Alabama cannot reasonably be made. We find that AETC failed to sustain its burden of showing that it served the needs of all of Alabama's citizens.

Employment Discrimination

23. Section 73.680 of the Commission's Rules declares as a general policy that equal opportunity in employment "be afforded by all licensees or permittees of commercially or noncommercially operated" broadcast facilities to all qualified persons, and that no person be discriminated against in employment by reason of race, color, religion, national origin or sex. As the ALJ noted, this Rule, adopted on June 4, 1969, did not go into effect until July 14, 1969,19/ only about eight months before the expiration of the license term here in question. Nevertheless, broadcast licensees were expected to comply with the equal opportunity laws in effect prior to the promulgation of the Rule. 20/ Therefore, in the resolution of the issue (Issue 4) as to whether AETC made "reasonable and good faith efforts" to assure equal employment opportunities to employees and prospective employees, we have taken into account its overall performance in this respect. But in considering this issue, we have taken into account AETC's efforts to comply with our Section 73.680 rules at all times, including after the expiration of the license term.

19/ *Report and Order, Nondiscrimination Employment Practices of Broadcast Licensees*, 9 FCC 2d 240 (1969).

20/ *See Nondiscrimination Employment Practices of Broadcast Licensees*, 13 FCC 2d 766 at 769 (1968), in which we stated that a violation of Title VII of the Civil Rights Act of 1964, 42 USC 2000(e) *et seq.*, "clearly raises a question as to the applicant's qualifications to be a broadcast licensee."

24. The record is ambiguous as to AETC's employment policies and practices during the license term. However, it does appear that three blacks applied for employment during that period and two were hired, one as a production assistant (part time) and one as a janitor. Moreover, there is no evidence of record of any instance where a black was denied employment on the basis of race. 21/ Petitioners argue that the employment of one full-time black out of a total staff ranging from approximately 30 to 50 employees makes out a *prima facie* case of discriminatory employment practices. But sole reliance upon statistical data is not warranted where, as here, only a small staff was employed by AETC and the record is devoid of proof of any affirmative acts of discrimination in employment. 22/

25. Furthermore, in view of the evidence that AETC did employ blacks during the license period, the fact that Section 73.680 was adopted such a short time before the expiration of the license term and the absence of any evidence suggesting that AETC denied employment to an individual by reason of race or color, we are justified in examining AETC's post-term employment policies and practices to help us determine whether the licensee behaved reasonably and in good faith in its efforts to assure equal employment opportunities for existing and prospective employees. As the record shows, and the ALJ found, AETC has made substantial efforts along these lines. AETC has initiated a number of measures aimed at recruiting minority applicants through various educational institutions, the Alabama NAACP, and the NET's training program for minorities. It has hired seven black employees, five of whom were in positions of responsibility at the network (three engineers,

21/ See *Pine Bluff Broadcasting, Inc.*, 33 FCC 2d 1050, 1059 (1972), in which we stated that "the best evidence of such discrimination or non-compliance would be specific examples of persons who were discriminated against by the licensee because of race, religion, color, national origin or sex."

22/ *Nondiscrimination in Employment Practices of Broadcast Licensees*, 13 FCC 2d at 771; *Star Broadcasting Co.*, 41 FCC 2d 792, 815 (1973). See also *Lemon v. Ice Royal Ice Cream, Inc.*, 431 F. 2d 815 at 267 (10th Cir. 1970), where the Court stated, "In light of the large number [500] of line drivers, the statistics established a *prima facie* case..."

an assistant to the director of programming, and a traffic manager). In addition, AETC has begun a training program in conjunction with the Jefferson County Committee for Economic Development and has established an equal employment opportunity program at the station. Other changes in its hiring procedures have also been made in order to exclude the possibility of employment discrimination. AETC's improvements have been ambitious enough, we think, to erase whatever questions may have been raised about its employment practices based on its license term performance. We agree with the FCC that AETC has met its burden of proof on Issue 4.

Post-Term Upgrading

26. In our designation order, we directed that "the extent of efforts being undertaken by the Alabama Educational Television Commission to develop programming to serve the needs of Alabama's citizens," be explored. However, we explicitly left open the question of what weight should be accorded to that evidence in light of the evidence adduced under Issues 1 and 2. 33 FCC 2d at 512 n. 5. With respect to its efforts to meet the needs of its service area, AETC has taken numerous constructive steps to improve its performance by involving blacks in its programming processes and by taking other steps to serve the needs of the black community since the conclusion of the last license term and during the pendency of these proceedings. Its programming during the post-license term period has included several black-oriented series and a number of specials and news reports, largely locally-produced. A large number of programs concerning black culture, history and arts, as well as other programs specifically aimed at Alabama's black residents have been broadcast by AETC since its license term ended in 1970. It has also offered several black-oriented shows and programming involving a substantial number of blacks produced by the National Educational Television network. Additionally, AETC has reorganized its Citizens Advisory Committee which serves to make programming recommendations and it presently includes eight blacks among its 23 members. AETC has now adopted a previewing procedure to screen broadcasts and it employs two black assistants to this operation. It has also established a new production center at Alabama A&M, a predominantly black institution. Although AETC continues to delegate decisions concerning the content of instructional programming to the SDE, it has taken steps since the last license period to encourage the participation of black teachers in the in-school instructional programming and to involve the Alabama A&M production center in such programming. Finally, AETC conducted a survey in the summer of 1971 to ascertain the sentiment of Alabama's black residents

concerning the licensee's programming. The survey, which was conducted by black educational institutions, has been used in rescheduling certain network black-oriented programs to suit the preferences of black viewers revealed by the survey.

27. AETC's substantial post-term improvements are commendable and we have therefore given careful consideration to whether they justify favorable action on the applications now before us. We conclude that they do not: AETC's discriminatory programming practices and its failure adequately to serve the black residents of Alabama during the license term constitute such serious derelictions that we cannot decide the case on the basis of post-term improvements.

28. We have made clear in a number of cases that evidence of upgrading toward the end of, or after, the license period must be discounted and will be given little weight in a renewal proceeding where the applicant's performance during the license period was seriously deficient. *KOFO, Inc.*, 21 FCC 85 (1961); *Evening Star Broadcasting Co.*, 27 FCC 2d 316 (1971), *aff'd and sub nom. Stone v. FCC*, 466 F. 2d 316 (D.C. Cir. 1972); *CBS General, Inc.*, 35 FCC 2d 100 (1972); *Policy Statement Concerning Comparative Hearing Involving Regular Renewal Applicants*, 22 FCC 2d 424 (1970), *aff'd in other pertinent part sub nom. Citizens Communications Center v. FCC*, 447 F. 2d 1201 (1971). The limited potency of post-license term performance in a renewal proceeding was also emphasized by the Court of Appeals in *Office of Communication of the United Church of Christ v. FCC*, 359 F. 2d 994 (1966). The court said:

> ...although in granting an initial license the Commission must of necessity engage in some degree of forecasting future performance, in a renewal proceeding past performance is its best criterion. When performance is in conflict with the public interest, a very heavy burden rests on the renewal applicant to show how a renewal can be reconciled with the public interest. Like public officials charged with a public trust, a renewal applicant must literally "run on his record." 359 F. 2d at 1007. 23/

23/ See also *Stone v. FCC*, *supra*, 466 F. 2d at 331.

23. This policy is rooted in the common sense proposition that enforcement of the public interest obligation of broadcasters cannot be meaningful if licensees are free to perform inadequately during their franchise period, secure in the knowledge that post-term efforts would guarantee renewal if a challenge should ever be mounted. Indeed, if we routinely allowed evidence of "upgrading" to save broadcast licenses that would otherwise not be renewed, we would expect to find potential competitors for the frequency hesitant to file a competing application because all would recognize that protracted litigation will give the licensee ample time to improve his performance.

30. Evidence of improved performance may in some circumstances be advanced by a renewal applicant as evidence of his willingness to correct deficient license term performance. 24/ However, as we noted in designating this issue for hearing, the weight to be accorded upgraded performance must necessarily depend on the seriousness of the deficiencies in the renewal applicant's license term performance. 33 FCC 2d at 512 n. 5. Having found, as we have here, serious misconduct involving discriminatory programming practices and an all but complete failure to serve the needs of Atlanta's black residents, we cannot invoke that discretion on ACTC's behalf. 25/

24/ The Court of Appeals in *United Church of Christ* specifically left to the Commission's discretion the opportunity "to experiment and even to take calculated risks on renewals where a licensee confesses the error of its ways..." 359 F. 2d at 1008 n. 28.

25/ ACTC's reliance at oral argument on *Regents of the University of New Mexico (KNME-TV FD)*, 47 FCC 2d 406 (1974), for its contention that consideration of upgraded performance is appropriate in this case is misplaced. In refusing to designate for hearing the question whether the licensee had served the needs of Mexican-Americans and other minorities within its service area, we noted specifically that petitioners had failed to substantiate their allegations and that the licensee had, in fact, shown itself to be responsive to the problems, needs and interests of minorities. There was no finding of seriously deficient license term performance like that evident in the present case. Furthermore, we explicitly stated that although KNME-TV did not pose a case of belated upgrading, we would give little weight to belated improvement where a licensee failed to respond to significant community problems, "particularly if such improvement occurs after the station's license expiration date." 47 FCC 2d at 413.

Ultimate Conclusions and Disposition

31. AETC's conduct during its 1967-1970 license term falls far short of the high standard which we expect the licensee of a broadcast facility to maintain. The licensee followed a racially discriminatory policy in its overall programming practices (Issue 1) and, by reason of its pervasive neglect of a black minority consisting of approximately 30 percent of the population of Alabama, its programming did not adequately meet the needs of the public it was licensed to serve (Issue 2). While we recognize the vital function which educational television has come to serve, we cannot condone the derelictions and deficiencies reflected by this record merely because the licensee is a "public broadcaster." Nor can we accept post-term improvements after AETC realized its renewal applications were in jeopardy as out-weighing the shortcomings demonstrated during the license period. A history of disservice during the license term of the magnitude disclosed by the evidence of record in this proceeding makes it impossible for us to find that renewal would serve the public interest, convenience and necessity. AETC's renewal applications must accordingly be denied. We likewise find that a grant of AETC's application for a license to cover construction permit for Station WIIQ(ED-TV) at Demopolis, Alabama, would be inconsistent with the public interest and we conclude that it also must be denied. 26/

26/ We note that the application in Docket No. 19430 is for a license to cover a construction permit and, therefore, unlike the renewal applications, may not fall within the ambit of Section 309 of the Communications Act of 1934, as amended, which clearly places upon the applicant the burden of proving that a grant of the license would serve the public interest, convenience and necessity. See Sections 309(a)-(g) and 319(c) of the Act. Although this question is presently pending before the Commission in *Chesapeake-Portsmouth Broadcasting Corporation*, 47 FCC 2d 306 (1974), it is unnecessary to await its resolution. Even if we hold that the burden of proof is not upon the permittee, it would not affect our decision as to WIIQ(ED-TV). That station is an integral part of AETC's network and AETC's programs were simulcast over all its stations. Thus the unacceptable policies and practices which preclude a favorable public interest finding with respect to the licenses for renewal of the eight licensed stations also preclude a favorable public interest finding with respect to the application for license for WIIQ. The evidence of racially discriminatory programming practices and the failure adequately to serve the needs of the large Black minority in Alabama is of sufficient power to require that AETC's license application be denied irrespective of which party has the burden of proof.

32. Normally, denial of renewal means that the licensee must cease operations and is further prohibited from filing a new application for a period of one year. In ordinary circumstances, that is the result that would follow here. But the circumstances here are not ordinary. This licensee is not an ordinary person. It is an agency of the State of Alabama and different considerations come into play in such circumstances. Cf. *Puerto Rico Telephone Co.*, FCC 74-784 (released July 19, 1974). Furthermore, the record reveals that since 1970 AETC has acted to correct the situation which existed during the license term. It has taken positive steps to insure black involvement in administrative and programming decision-making as well as in the production and presentation of programs, and to eliminate the discriminatory practices which previously had been followed. The improvements undertaken by AETC demonstrate that it has the capacity to change its ways and therefore that, despite its past misconduct, AETC possesses the requisite character qualifications to be a Commission licensee. Accordingly we hold that AETC is not ineligible to file applications anew for construction permits for the facilities, or any of them, under consideration here. 27/ Of course, applications may be filed by any interested persons and we expressly invite all such interested persons to do so. Applications for these facilities should be tendered by April 1, 1975. Because its renewal applications have been denied, AETC will not be entitled to any preference by reason of its prior status as a licensee. It must compete on an equal footing with any other applicants who may file for the frequencies. See *Lamar Life Broadcasting Co.*, 25 FCC 2d 101 (1970), 24 FCC 2d 618 (1970). In connection with any such applications, we will take particular note of whether and to what extent the composition of the AETC and its staff has changed since the license term.

33. In view of the extensive improvements effectuated by AETC and the pressing need for public television in Alabama, we find that the public interest will be well served by granting AETC interim authority to

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27/ To this end, the provisions of Section 1.519 of our Rules governing the filing of repetitious applications will be waived.

continue operation of the eight stations for which it had held licenses and of the station for which it currently holds a construction permit, pending final Commission action on the new applications to be filed or until our further order. 28/ This procedure will avoid any interruption of valuable instructional and other educational services to the people of Alabama while the new applications are being processed.

34. ACCORDINGLY, IT IS ORDERED, That the above-captioned applications of the Alabama Educational Television Commission for renewal of licenses of Stations WAIQ, WBIQ, WCIQ, WDIQ, WEIQ, WFIQ, WGIQ, WHIQ and for a license to cover the construction permit for Station WIIQ ARE DENIED.

28/ This is in complete accord with the relief requested by petitioners herein, and is consistent with the WZAT case. *Office of Communication of the United Church of Christ v. FCC*, 425 F. 2d 543 (1969). In WZAT where similar serious misconduct precluded grant of the licensee's (Lamar Life) renewal applications, the Court of Appeals permitted the licensee to apply for the license and left open the possibility that it be allowed to carry on interim operations pending the completion of hearings on competing applications.

35. IT IS FURTHER ORDERED, That the Alabama Educational Television Commission IS AUTHORIZED to file applications for licenses for the above-captioned stations or for any of them; and that, on the Commission's own motion, Section 1.519 of the Rules IS WAIVED for this purpose.

36. IT IS FURTHER ORDERED, That the filing of competing applications for the above-captioned stations or for any of them IS INVITED; and that, in order to receive Commission consideration, a substantially complete application for each of the said stations SHALL BE TENDERED FOR FILING at the offices of the Commission in Washington, D.C. by the close of business on April 1, 1975.

37. IT IS FURTHER ORDERED, That the Alabama Educational Television Commission IS GRANTED interim authority to operate each of its stations pending final action on the new applications to be filed for said stations or until further order of the Commission.

38. IT IS FURTHER ORDERED, That these proceedings ARE TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION *

Vincent J. Mullins
Secretary

*See attached Joint Dissenting Statement of Commissioners Robert E. Lee and Charlotte T. Reid.

APPENDIX

Rulings on Exceptions of Petitioners Eugene Farrell, Linda Edwards, Steven Smith and William D. Wright.

Exception No.	Ruling
1	Denied. The Commission may consider evidence of post license term improvements in certain circumstances. See *Office of Communication of the United Church of Christ v. FCC*, 359 F2d 994 (1966).
2	Denied. The Judge's ruling is correct. See ruling on exception 37.
3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19	Denied. The challenged rulings are not of decisional significance.
17	Granted. The racial composition of the Alabama Educational Television Commission is relevant to the issue of discrimination in the licensee's overall programming practices.
19, 20, 21, 22, 24, 27, 28, 29, 32	Denied. The findings to which exceptions are taken and the additional requested findings are not of decisional significance in light of our findings concerning AETC's responsibility for the actions of those to whom it delegated programming responsibilities. See Decision and ruling on exception 33.
23, 33, 86, 87	Granted in substance. AETC as licensee had the power to revoke all delegations of authority and was ultimately responsible for the discriminatory actions of the delegatees who produced the programming broadcast on its frequencies. See Decision and 33 FCC 2d at 508.
25, 26	Granted. The testimony of Mr. Stork indicates that the Montgomery production center was uniquely under the control of AETC.
30, 31, 129	Granted. The record warrants the conclusion that AETC chose to delegate certain programming authority to the SDE.

Exception No.	Ruling
34	Granted in part and denied in part. Applicable precedent and the designated issue on discriminatory programming practices do not limit the inquiry to a question of the existence of a formal policy of discrimination. To the extent that the ALJ's finding reflects a misconception in the Initial Decision on this point, the exception is granted. In all respects it is denied as without decisional significance.
35, 36, 48	Granted. The ALJ erroneously concentrated his analysis of the evidence under Issue 1 on the amount of integrated programming broadcast on AETC, while the issue was directed at the "overall programming practices" of AETC. Moreover, the question of discrimination in programming was incorrectly characterized as involving the amount of programming directed specifically toward black audiences.
37, 58, 61, 63	Granted in part and denied in part. The Judge erroneously gave undue weight to the evidence of integrated programming contained in AETC Exhibit 1 which represented virtually all integrated programming made available to it by the production centers. This programming is insufficient to overcome the evidence of the sample weeks which were stipulated to be random examples of typical AETC programming. In all other respects the requested findings are denied as without decisional significance.
38	Granted. The record reveals that only one-half hour of integrated programming was actually broadcast during the week of November 10-16, 1969.
39, 65	Granted in substance. Even if the NET affiliation contract were ambiguous, AETC could readily have ascertained whether offending material could be deleted from a program.

Exception No.	Ruling
40, 42, 46, 47, 88, 90	Granted. The evidence suggests that the decisions to preempt NET programming were based in part on impermissible racially discriminatory grounds. See discussion of NET programming in the Decision.
41	Granted. The statements suggest that the ALJ erroneously placed the burden of proof on petitioners rather than on AETC. See 33 FCC 2d at 514.
43, 94, 95	Denied. The findings are not of decisional significance.
44, 45, 49, 51	Granted in substance. To the extent indicated in the discussion of discriminatory programming in the Decision, the objections to the findings are sustained and the requested findings are granted.
50	Denied. The testimony was entitled to consideration even though it was outweighed by other evidence.
52, 53, 54, 55, 56, 57, 60, 62, 64(f), 66(c)-(d), 68, 69, 72, 73, 76, 80, 81, 91	Denied. The findings are not of decisional significance in light of our Decision in this proceeding.
59, 64(a)-(e), 66(a)-(b), 67, 71	Granted. The requested findings accurately reflect the record and are of decisional significance.
70(a)-(d), (f)	Granted. The requested finding is an accurate summary of the evidence contained in the testimony of the general manager and the memoranda from the production coordinators and is of decisional significance.
70(e)	Denied. The requested finding is incomplete and would present only a partial picture of the reasons why "Dick Gregory is Alive and Well" was not broadcast.
74, 75, 89	Granted in part and denied in part. See discussion of burden of proof in the Decision and the resolution of each of the designated issues in the Decision.

Exception No.	Ruling
77, 78, 79, 85, 92, 102, 103, 107	Denied. Our Decision more accurately reflects the evicence of record.
82, 83, 84	Denied. The requested conclusions are not of decisional significance for the reasons contained in the discussion of discriminatory programming.
93, 104	Denied. The exceptions do not comply with Section 1.277(a) of the Rules.
96	Granted in substance for the reasons contained in the Decision.
97	Petitioners have not filed any exception 97.
98	Granted. The requested finding accurately reflects the record and is of decisional significance.
99, 100, 110, 111, 113	Granted in part and denied in part. To the extent indicated in the Decision, the exceptions are granted but in all other respects, they are redundant and denied as without decisional significance in view of our Decision.
101	Denied. The record evidence is insufficient to support the requested finding.
105, 106, 108, 109	Granted. The requested findings accurately reflect the record and are of decisional significance.
112, 118	Denied. The requested findings are not of decisional significance in light of our Decision.
114	Petitioners have filed no exception 114.
115	Denied. There is no merit to petitioners' contention that the exhibit is without foundation. See, however, our rulings on exceptions 37, 58, 61 and 63, supra.

Exception No.	Ruling
116	Denied. Petitioners' exception violates Section 1.277(a) of the Rules in that they are argumentative and unsupported by record citations.
117	Granted. AETC's professed ignorance of its responsibilities as a licensee cannot excuse its inept performance and failure to serve Alabama's black communi
119, 121, 124, 125	Denied. The ALJ's findings adequately and correctly reflect the record evidenc
120, 122, 123, 124A, 156	Denied. The exceptions relate to findin which are not of evidentiary significanc in light of our Decision in this proceed
126, 147	Denied. The extent to which post-term improvements may be considered is set forth in the Decision.
127, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 140, 143, 144, 146, 148, 149, 150, 152	Denied. The ALJ's findings adequately and correctly reflect the relevant and material evidence of record. Further, petitioners' objections to findings and requested findings are not of decisional significance and the ALJ is not required to make findings on every conceivable point on which evidence is offered.
139, 145, 151, 153	Denied. The requested findings are not of decisional significance in light of our Decision in this case.
141, 142	Granted in substance. The requested findings are relevant and supported by record evidence.
153a	Denied in substance. See discussion of Section 73.680 of the Rules in the Decis
154, 155	Denied. We agree with the Judge's findi and conclusions which are supported by the evidence of record.
157	Granted. The requested finding accurate reflects the record evidence.

Exception No.	Ruling
158, 159, 160, 161, 162, 163	Denied. The requested findings are not of decisional significance in light of our Decision.
164, 165	Denied. The ALJ correctly applied the burden of proof with respect to issue 4.
166, 167, 171, 172, 173, 174, 175, 176, 179, 182	Denied. The ALJ's findings and conclusions correctly reflect the record evidence and are consistent with applicable law.
168, 169, 170, 177	Denied. The requested findings are not of decisional significance in light of our Decision on this issue.
178	Denied. The requested finding is speculative and not supported by record evidence.
180, 181, 183, 184, 185	Granted in substance. AETC has not met its burden of demonstrating that renewal of its licenses would serve the public interest and we conclude that the applications must be denied. AETC being allowed to file new applications and continue operations as provided for in the Decision.

Rulings on Limited Exceptions Filed by the Alabama Educational Television Commission.

Exception No.	Ruling
1	Denied. The cited programming was considered by the Commission, but was outweighed by the other evidence concerning AETC's failure to serve Alabama's black citizens. Furthermore, AETC has offered no evidence of how its programming was serving the needs of Alabama's black citizens.
2	Denied. The ALJ's conclusion correctly reflects the weight of the evidence.
3	Denied. Although licensees are not required to provide separate programming designed specifically for minorities, it is clear that they may not ignore the needs and interests of significant minorities in their service area. *Capital Broadcasting, Inc.*, 30 FCC 1135 (1965), *Time-Life Broadcast, Inc.*, 33 FCC 2d 10 (1972). Furthermore, AETC's overall programming cannot offset the serious deficiencies established by the evidence.
4, 5	Denied. The sample weeks were stipulated to be random examples of AETC's typical weekly programming and AETC provided information concerning the extent to which each program was integrated. And although it had the burden of proof on each designated issue, AETC did not come forward with evidence that it broadcast a significant amount of additional integrated programming. Furthermore, integrated programming as reflected in the sample weeks was only one factor considered by the Commission in determining whether AETC had discriminated in its programming practices and whether it had served the needs of Alabama's black citizens.
6	Denied. AETC raised no objection at the hearing to the question concerning the programs, and Mr. Hurlbert, the general manager of AETC, testified that he recalled the program and that it was not

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Exception No.	Ruling
6 (continued)	carried by AETC. (Tr. 951). In addition, if further information regarding these programs was pertinent, it was incumbent upon AETC to come forward with such evidence.

JOINT DISSENTING STATEMENT OF
COMMISSIONER ROBERT E. LEE AND
COMMISSIONER CHARLOTTE T. REID

RE: Alabama Educational Network (AETC)

Today a new chapter is written in the history of the Federal Communications Commission, one which we do not believe to be either reasonable or in the public interest. A chapter which represents to us, at least, an attempt to punish, in the harshest way possible, under our Rules, the Alabama Educational Television Commission, licensees of eight operational Educational TV Stations and permittee of a Construction Permit for one new Educational TV facility.

SEPARATE VIEWS OF COMMISSIONER ROBERT E. LEE

We are all aware of the long struggle for the attainment of Civil Rights in this country. At the outset, I would like to say I have always been a supporter of full Civil Rights for all U.S. citizens; particularly since I am a member of a minority and was the son of poor immigrant parents. My support of Civil Rights dates back to a point in time before it was fashionable to take this position.

When I first came to the Commission in 1953, I took a very active position in promoting educational broadcasting, which was far from being a reality. I had many conversations with Alabama Educational officers, including the then Governor Persons. These officials took a leading role in developing educational TV in Alabama and were ultimately the first interconnected statewide TV network. As a matter of fact, in my efforts to promote educational TV, I used Alabama as an example when I encouraged other states such as New York to emulate their success.

We are now faced with a situation wherein the majority of the Commission may destroy the educational TV system in Alabama because of past dereliction in the area of Civil Rights. I certainly do not excuse such derelictions, but it seems to me that the time for punishments, or even revenge, is long past; particularly when the record reflects that these wrongs have long since been corrected.

As will be noted, only one of the four Commissioners in the majority today, was a member of the Commission at that time. The Commission felt that this was an exceptional case, one which warranted further consideration. The record before this Commission adequately reflects substantial compliance by the AETC of the Commission's Rules. Certainly hindsight is much better than foresight on the part of the AETC, but they did respond to the problems. To punish them in the fashion done here by the majority does not in my mind appear to be in the public interest. Are we really punishing AETC or all the citizens of Alabama?

I join with Commissioner Lee in his fear that this decision may well destroy the educational TV system in Alabama. A system which all citizens of that state deserve and need. To use this system as a whipping boy will not serve in the best interest of anyone.

For these reasons, I join with Commissioner Lee in this dissent, I only wish it could have been the majority's decision.

% PROFESSIONAL COMPOSITION OF FCC WORKFORCE
AS OF 5/21/76

Total Filled Positions = 2,074

Total % Professional = 37.99% (788 positions)

Professional Occupations:

	No.	% of Filled Positions
Economist	= 23	01.10%
Accountant	= 43	02.07%
Engineer	= 388	18.70%
Attorney	= 317	15.28%
Mathematician	= 1	00.04%
Statistician	= 3	00.14%
Librarian	= 3	00.14%
Physical Scientist	= 2	00.09%
Operations Research Analyst	= 8	00.38%
	788	

OCCUPATIONAL GROUPINGS BY PERCENTAGES

3/23/76

TOTAL CLASSIFICATION ACT POSITIONS: 2022

ALL OTHERS INCLUDE:

Personnel	1.23%
Information	0.49%
Pub. Util. Sp.	1.03%
Economists	1.13%
Supply & Proc.	0.74%
Librarians	0.19%
Gen Bus & Ind.	2.07%
Comm Spec & Clk	1.59%
Oper Res Anal	0.39%
Mathematician	0.84%
Phys Scientist	0.09%
Statistician	0.14%
Miscellaneous	0.64%

OCCUPATIONAL GROUPINGS FOR PIE CHART

AS OF 5/[illegible]/76

Total Classification Act Position Strength = 2022

Occupational Group	Percentage of Class Act Positions
Professional Engineers	19.38
Attorneys & Admin Law Judges	15.67
Clerk-Typist/Steno/Secretaries	17.45
Applications & Legal Examining	9.74
Electronics Technician	5.98
Admin Clerical	5.83
Admin Manager	4.35
Acct & Budget	3.61
Data Processing	5.04
Miscellaneous Clerical	3.06
All Others	9.84

All Others Include:

Personnel	1.23
Information	0.49
Public Utilities Spec	1.03
Economist	1.13
Supply & Procurement	0.74
Librarian	0.19
Gen Bus & Ind	2.07
Comm Spec & Clerk	1.58
Oper Research Anal	0.39
Mathematician	0.04
Physical Scientist	0.09
Statistician	0.14
Miscellaneous	0.64

LEGEND FOR OCCUPATIONAL GROUPINGS

Professional Engineer	855, 802, 896
Attorney & Administrative Law Judge	904, 905, 935
Automatic Data Processing	330, 332, 334, 335
Clerk-Typist/Steno/Secretary	312, 316, 318, 322
Accounting & Budgeting	501, 505, 510, 520, 525, 544, 560
Applications & Legal Examining	963, 986
Electronics Technician	856
Miscellaneous Clerical	301 (GS-1-4) 305, 356, 351
Administrative Clerical	301 (GS-5-10), 341 (GS-5-10), 344
Administrative Managerial	018, 080, 160, 301 (GS-11-18), 341 (GS-11-18), 340, 342, 343, 345
All Others	
Personnel	201, 203, 212, 221, 230, 235
Economist	110
Librarian	1410, 1411
Supply/Procurement	1102, 1105, 1106, 2003 2005
Information	1081, 1082, 1084, 1087
Statistician	1530
General Business & Industry	1101
Communications Specialist & Clerical	391, 392, 393, 394
Operations Research Analyst	1515
Mathematician	1520

Physical Scientist	1301
Miscellaneous	1421, 962, 1046, 1160, 1412, 1531, 1654, 1810
Public Utilities Specialist	1130

AFFIRMATIVE ACTION PLAN FOR EMPLOYMENT OF
PHYSICALLY HANDICAPPED AND DISABLED VETERANS 1977

Implementation of 1976 Plan

We prepared and distributed to all departmental and field supervisors an Affirmative Action Plan for the employment of the handicapped and disabled veterans for 1976. All action items in this plan have been accomplished with the exception of establishing an advisory committee to participate in activities of interest to handicapped individuals. Through our newsletter, the FCC Communicator, we invited handicapped employees to participate; however, we had no response. Although the final result is not known for this year's summer employment, contacts with appropriate sources in all geographical areas where summer jobs will be available have been made requesting referral of available handicapped candidates.

The following actions occurred in accordance with our plans:

Policy statement signed by the Chairman was distributed to all agency supervisors.

Allen Eggers, Chief, Employment Branch, who is the Coordinator for the Employment of the Physically Handicapped, was also designated as the Coordinator for the Employment of Disabled Veterans. Formal publicity on the program has been included in the FCC house organization.

Our field stations are small and mostly staffed with Engineering positions requiring fairly arduous activities. Although suitable vacancies occur at individual stations infrequently, liaison has been established with veteran's organizations and rehabilitation agencies in each local area where we have field installations, as well as in Washington, D.C. These agencies were informed as to the kinds of occupations in our work force, the name and telephone numbers of the Commission's Coordinator and the employee in charge of the local installation. Reports were submitted to the Commission's Coordinator which included the names, addresses and telephone numbers of veteran's organizations and rehabilitation agency contacts on a nationwide basis.

Supervisory training courses now include coverage of the employment of the physically handicapped, disabled and Vietnam Era Veterans. Arrangements have been made for a Civil Service Commission resource person to participate in currently scheduled training.

Staffing specialists have been trained and familiarized on this program, hiring authorities, and procedures. Hiring of the handicapped is an integral part of our staffing activities and vacancies are routinely reviewed, manpower resources explored, and available handicapped individuals considered and referred for selection.

A survey of architectual and facility barriers to employment has been completed which identified areas of possible improvement. Generally the defects identified represent no immediate problems for those handicapped individuals presently employed. Possible corrections will be reviewed to determine priority of need and feasibility of implementation.

We have explored with some State Vocational Rehabilitation Agencies our participation in unpaid work experience programs. However, in all cases the work experience available in our agency has not been compatable with the needs of the handicapped individuals; although we were able to participate in one such program, none of the participants were physically handicapped.

During calendar year 1975, our new hires included fifty-four Vietnam Era veterans. Three of these were appointed under the VRA Program. The total included three ten-point compensable veterans, one ten-point other, and two handicapped individuals.

The total number of handicapped employees on the roles in December, 1974, was 37. In December, 1975, the total was 63, an increase of 26. During the same period the ten-point compensable employees increased from 23 to 32, and the ten-point other changed from 20 to 18. The number of handicapped in these categories remained unchanged. Although new handicapped individuals were hired, some of the change is due to purification of the computer bank data.

In addition to the time spent by the Coordinator on this program an estimated 245 manhours were expended by operating officials and personnel staff in carrying out efforts in implementing the Affirmative Action Plan and activities involved in obtaining, evaluating and considering handicapped candidates and providing other services for handicapped employees. In some of our Field installations, the Engineers in charge have been actively participating with the Federal Executive Boards in coordinated programs for employment of the handicapped and disabled veterans.

60-488 O - 77 - 15

Action Plan for 1977

A copy of the Chairman's letter expressing this Commission's policy on employment of handicapped individuals and disabled veterans, which is attached, is a current statement and copies will be re-distributed to all supervisors and posted on our bulletin boards.

This Commission has a staff of approximately 2,100 employees. The personnel function and appointing authority is centralized in Washington, D.C. The Chief, Employment Branch has been designated the agency-wide Coordinator for employment of the physically handicapped and the disabled veterans. Although there are no component coordinators, the engineers in charge in field locations are performing liaison and contact with local manpower resources. Likewise, the Staffing Specialists will carry out positive activities in source contacts, placement of handicapped individuals, and providing needed services for the handicapped.

We expect the Staffing Specilaists to continue, as an integrated activity in our staffing program, to conduct outreach and promotional activities in an effort to place handicapped individuals in appropriate jobs.

AFFIRMATIVE ACTION PLAN FOR EMPLOYEMENT OF THE PHYSICALLY HANDICAPPED

FY-77

Action Items	Implementation Process	Responsible Official	Target Date
Issue Policy Statement on Employment of Handicapped including disabled veterans.	Distribute to all supervisors the Chairman's Memorandum dated May 20, 1975. Post copies on bulletin boards.	Coordinator and Bureau Directors and Heads of Staff Offices.	June 15, 1976
Establish periodic monthly report on accessions and losses of handicapped and disabled veterans.	Schedule production of computer monthly list.	Coordinator	May 1, 1976
Establish Advisory Committee of handicapped individuals to advise on matters concerning employment, advancement and environment.	Personal requests to handicapped individuals to participate.	Coordinator	May 30, 1976
Schedule corrections of architectual barriers to employment.	Review survey made in 1976 plan. Identify feasible changes and priorities. Establish schedule with target dates, cost and availability of funds.	Chief, Administrative Services Division	November 1, 1976
Assure consideration of alternative job assignments for all applicants for disability retirement or resignations relating to the handicapped.	Issue instructions and procedures for counseling employees, identification of alternative jobs available and reports of efforts, and assigning responsibilities.	Employee Relations Officer	November 30, 1976

AFFIRMATIVE ACTION PLAN FOR EMPLOYMENT OF THE PHYSICALLY HANDICAPPED

FY-77

Action Items	Implementation Process	Responsible Official	Target Date
Identify employees who become handicapped after employment.	Prepare and issue instructions and proceedures for reporting and entry to computor data bank codes for those individuals who become handicapped.	Coordinator	January 30, 1977

AFFIRMATIVE ACTION PLAN FOR EMPLOYMENT OF THE DISABLED VETERANS

FY-77

Action Item	Implementation Process	Responsible Official	Target Date
Issue Policy Statement	Distribute to all supervisors the Chairman's Memorandum dated May 20, 1975. Post copies on bulletin boards.	Coordinator and Bureau Directors and Heads of Staff Offices	June 15, 1976
Establish periodic monthly report on accessions and losses of disabled veterans	Schedule production of computer monthly list.	Coordinator	May 1, 1976
Outreach Recruiting	Telephone contacts with Veterans Administration, and other veterans organizations for referral of disabled veterans with the necessary skills and abilities.	Staffing Specialist (Mrs. Sosa)	May 15, 1976
Schedule corrections of architectural barriers	Review survey made in 1976 plan. Identify feasible changes and priorities. Establish schedule with target dates, cost and availability of funds.	Chief, Administrative Services Division	November 1, 1976

Format for Agency Report of Affirmative Action
Program Plan on Employment of the Handicapped

A. Statistical Data

1. Total number of all employees as of December 31, 1975. (Include full-time permanent and all others.) 2041

2. Total number of all handicapped employees as of December 31, 1975. This number includes only those disabled veterans with reportable handicaps. 63

* NOTE: A determination of handicapped employees must be made from extracting records using the codes and guidelines shown in FPM chapter 291, appendix C, paragraph 2, for determining reportable handicaps.

B. Other

1. Number of agency component activities and field establishments having appointing authority. 0

2. Percentage of time spent by agencywide Coordinator for Selective Placement in managing the program. (1) 4%

3. Number of coordinators designated in all component agency activities. 0

Percentage of time spent by component coordinators in implementing the program. Indicate the number in each group: (2) 0

1 - 10%	
11 - 25%	
26 - 50%	
51 - 75%	
76 - 100%	

C. Source of Data

1. Describe the source of data used for the report on the number of handicapped employees. (Item A-2 above)

Data obtained from computerized personnel data bank.

Attachment 2 to FPM Ltr. No. 306-10

Format for Agency Report of Affirmative Action
Program Plan on Employment of Disabled Veterans

Statistical Data as of December 31, 1975
(Use the following table format.)

Veteran Status	No. in Work Force	No. Handicapped
10 point compensable	32	8
10 point noncompensable	18	3
5 point	XXXXXXX	15

NOTE: A determination of handicapped employees must be made from extracting records using the codes and guidelines shown in FPM chapter 291, appendix C, paragraph 2, for determining reportable handicaps.

Source of Data

1. Describe the source of data used for the report in Item A above.

   Data obtained from computerized personnel data bank.-

Excludes 10 point other (spouse, widow/widower, and mother).

(1) Half of this time was spent on program planning and half on implimentation

(2) Although there are no component coordinators, approximately 50 man-hours were expended by field employees in establishing contacts and liaison with service and manpower resources.

UNITED STATES GOVERNMENT

Memorandum

TO : All Bureau Heads/Staff Officers and Field Installation Heads

DATE: MAY 20 1975

FROM : Chairman

SUBJECT: Employment Advancement and Utilization of Handicapped Individuals

The Rehabilitation Act of 1973 (P.L. 93-112) and the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (P.L. 93-508) reaffirm and establish a clear national policy for positive efforts in the hiring, placement, and advancement of handicapped individuals in the Federal Government. The Vietnam Era Veterans' Readjustment Assistance Act of 1974 adds a new thrust to the Federal effort on behalf of these deserving individuals.

Therefore, it is the policy of this Commission to make vigorous efforts to promote, expand, and enhance the employment opportunities for handicapped employees and those handicapped individuals who are seeking employment.

Handicaps are manifested in a multitude of varieties. There are few jobs that cannot accommodate some of these. However, special attention must be given to those obvious and severe handicaps that have historically presented barriers to employment. Supervisors and management officials are called on in filling vacancies to carefully consider modifications in the work environment and job content in an effort to bring about meaningful realization of the objective: employment of the handicapped.

The Executive Director has general program direction with management responsibility assigned to the Personnel Division and will provide sufficient resources for the operation of the program for employment of the handicapped. However, every staff member has a key role in making the program work and achieving results, and your diligent efforts are appreciated by those to whom you may provide new hope for productive contributions to society.

Richard E. Wiley

UNITED STATES CIVIL SERVICE COMMISSION
BUREAU OF RECRUITING AND EXAMINING
WASHINGTON, D.C. 20415

ESP:DGP

21 APR 1977

Mr. Delbert H. Flint
Director of Personnel
Federal Communications Commission
1919 M Street NW
Washington, D.C. 20554

Dear Mr. Flint:

We have received your letter which transmitted the 1977 affirmative action program plan for the hiring, placement, and advancement of handicapped individuals and disabled veterans and the report of 1976 program achievements for the Federal Communications Commission.

Based on our continuing contacts with your staff and your report of achievements, we feel that the Federal Communications Commission has made satisfactory progress toward the goal of ensuring equal employment opportunity for disabled persons. The many contacts which your agency has made with potential sources of handicapped applicants are important, and we are pleased that these contacts have resulted in some placements.

We feel that your 1977 affirmative action plan provides a satisfactory foundation for continued progress, and we are approving it at this time. In order to be truly effective, the selective placement program must be an integral part of your entire personnel management system. Although we recognize that the process toward integration has been slow, we are pleased to note that you are moving in this direction with respect to the staffing function. In addition, we are certain that you realize that your program covers all handicapped individuals, not just those with physical impairments. Therefore, we suggest that you remove the word physically from the title of your plan.

A program manager from our Office of Selective Placement Programs will continue to be available to assist you in the implementation of your program.

Sincerely yours,

John W. Fossum
Acting Director

MINORITY CODES AND SEX BY PAY PLAN - GRADE A/O 07/16/76 PAGE 1 DPS11E

PAY PLAN	TOTAL NUMBER			NEGRO			SPANISH SURNAMED			AMERICAN INDIAN			ORIENTAL			ALL OTHERS		
GRADE	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F
GS-18	4	4														4	4	
GS-17	13	12	1													13	12	1
GS-16	32	31	1	1	1											31	30	1
GS-15	125	119	6	6	6								1	1		118	112	6
GS-14	172	163	9	13	13					1	1					158	149	9
GS-13	224	220	14	18	15	3							2	2		214	203	11
GS-12	178	158	20	14	12	2	1	1					4	4		159	141	18
GS-11	182	139	43	10	5	5	4	3	1	1		1	3	2	1	164	129	35
GS-10	21	19	2	4	3	1										17	16	1
GS-09	143	94	49	17	4	13	2	1	1	1	1					123	88	35
GS-08	56	24	32	11	2	9	2	1	1							43	21	22
GS-07	157	55	102	40	9	31	2	1	1				3	2	1	112	43	69
GS-06	181	35	146	79	11	68	3	1	2				1		1	98	23	75
GS-05	204	44	160	86	10	76	4	2	2				2		2	112	32	80
GS-04	156	24	132	67	7	60	2		2				1	1		86	16	70
GS-03	75	10	65	44	8	36							1		1	30	2	28
GS-02	62	5	57	12	1	11										49	4	45
GS-01	3		3	2		2										1		1
TOTAL GS	1996	1156	842	424	107	317	20	10	10	3	2	1	18	12	6	1532	1025	507
GH-02	1		1	1		1												
GH-02	5		5	1		1										4		4
GH-01	9		9	4		4										5		5
TOTAL GH	15		15	6		6										9		9

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MINORITY CODES AND SEX BY PAY PLAN - GRADE A/O 07/16/76 PAGE 2 DPS116

PAY PLAN	TOTAL NUMBER			NEGRO			SPANISH SURNAMED			AMERICAN INDIAN			ORIENTAL			ALL OTHERS		
GRADE	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F
WG-10	1	1														1	1	
WG-09	2	2														2	2	
WG-08	4	4		1	1		1	1								2	2	
WG-07	1	1					1	1										
WG-06	2	2														2	2	
WG-05	6	6		3	3											3	3	
WG-04	1	1		1	1													
WG-03	3	3		3	3													
WG-02	3	3		3	3													
TOTAL WG	23	23		11	11		2	2								10	10	
WP-24	1	1		1	1													
WP-20	1	1		1	1													
WP-18	1	1		1	1													
WP-16	2	2		2	2													
WP-15	1	1		1	1													
WP-14	1	1		1	1													
WP-12	2	2		2	2													
WP-09	7	6	1	7	6	1												
WP-08	2	2		1	1													
WP-06	1	1		1	1											1	1	
WP-05	1		1	1		1												
TOTAL WP	20	18	2	19	17	2										1	1	

FEDERAL COMMUNICATIONS COMMISSION

MINORITY CODES AND SEX BY PAY PLAN - GRADE A/O 07/18/76 PAGE 3 DPS118

PAY PLAN	TOTAL NUMBER			NEGRO			SPANISH SURNAMED			AMERICAN INDIAN			ORIENTAL			ALL OTHERS		
GRADE	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F
YY-	6	1	7	5		5												
YY-GS	31	16	15	15	9	6	5	3	2	1	1		1	1		2		2
TOTAL YY	39	17	22	20	9	11	5	3	2	1	1		1	1		10	3	7
TOTAL FCC	2095	1314	881	480	144	336	27	15	12	4	3	1	19	10	9	1564	1039	525

FEDERAL COMMUNICATIONS COMMISSION

MINORITY CODES AND SEX BY OCCUPATION CODE - PAY PLAN - GRADE A/O 07/10/76 PAGE 1 DPS117

OC-CD	PP/GRADE	TOTAL NUMBER			NEGRO			SPANISH SURNAMED			AMERICAN INDIAN			ORIENTAL			ALL OTHERS		
		ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F
0080	GS-14	1	1														1	1	
	-12	1	1														1	1	
	-09	1		1													1		1
	TOTAL - GS	3	2	1													3	2	1
	TOTAL - 0080	3	2	1													3	2	1
0110	GS-15	4	4														4	4	
	-14	1	1														1	1	
	-13	4	4														4	4	
	-12	4	3	1	1		1										3	3	
	-11	4	4														4	4	
	-09	3	3														3	3	
	-07	1	1														1	1	
	TOTAL - GS	21	20	1	1		1										20	20	
	TOTAL - 0110	21	20	1	1		1										20	20	
0160	GS-15	1	1		1	1													
	-14	1	1																
	-12	1		1													1	1	
																	1		1
	TOTAL - GS	3	2	1	1	1											2	1	1
	TOTAL - 0160	3	2	1	1	1											2	1	1
0201	GS-15	1	1																
	-14	1	1														1	1	
	-13	2	1	1													1	1	
																	2	1	1
	TOTAL - GS	4	3	1													4	3	1
	TOTAL - 0201	4	3	1													4	3	1
0203	GS-09	1		1	1		1												
	-06	3		3	2		2												
	-05	2		2	2		2										1		1
	-04	1		1	1		1												
	TOTAL - GS	7		7	6		6										1		1

FEDERAL COMMUNICATIONS COMMISSION

OC-CD PP/GRADE	TOTAL NUMBER			NEGRO			SPANISH SURNAMED			AMERICAN INDIAN			ORIENTAL			ALL OTHERS		
	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F
TOTAL - 0203	7		7	6		6										1		1
0212 GS-14	1	1														1	1	
-13	1	1														1	1	
-12	3	2	1	2	2											1		1
TOTAL - GS	5	4	1	2	2											3	2	1
TOTAL - 0212	5	4	1	2	2											3	2	1
0221 GS-14	1	1														1	1	
-13	1		1													1		1
-12	1		1													1		1
-09	1	1														1	1	
TOTAL - GS	4	2	2													4	2	2
TOTAL - 0221	4	2	2													4	2	2
0230 GS-13	1	1														1	1	
-11	1		1													1		1
TOTAL - GS	2	1	1													2	1	1
TOTAL - 0230	2	1	1													2	1	1
0235 GS-13	2	2														2	2	
-09	1		1													1		1
TOTAL - GS	3	2	1													3	2	1
TOTAL - 0235	3	2	1													3	2	1
0301 GS-17	4	3	1													4	3	1
-16	3	3														3	3	
-15	12	12														12	12	
-14	6	6		1	1											5	5	
-13	9	9														9	9	
-12	1		1													1		1
-11	9	2	7	1		1										8	2	6
-10	1		1													1		1

FEDERAL COMMUNICATIONS COMMISSION

MINORITY CODES AND SEX BY OCCUPATION CODE - PAY PLAN - GRADE A/O 07/18/78 PAGE 3 DPS117

OC-CD PP/GRADE	TOTAL NUMBER			NEGRO			SPANISH SURNAMED			AMERICAN INDIAN			ORIENTAL			ALL OTHERS		
	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F
0301 GS-09	5	2	3							1	1					4	1	3
-08	8	1	7	2	1	1										6		6
-07	14	3	11	4	1	3										10	2	8
-06	51	3	48	17	3	14							1		1	33		33
-05	22	4	18	14	1	13										8	3	5
-04	10	4	6	6	1	5										4	3	1
-03	3		3	1		1										2		2
-02	1		1	1		1										1		1
-01	2		2	1		1												
TOTAL - GS	161	52	109	48	8	40				1	1		1		1	111	43	68
0301 GW-02	3		3	1		1										2		2
-01	4		4													4		4
TOTAL - GW	7		7	1		1										6		6
0301 YV-00	1		1	1		1												
TOTAL - YV	1		1	1		1												
TOTAL - 0301	169	52	117	50	8	42				1	1		1		1	117	43	74
0305 GS-07	1	1		1	1													
-05	5	2	3	5	2	3												
-04	4	2	2	4	2	2												
-03	15	5	10	12	4	8												
-02	4	1	3	4	1	3							1		1	2	1	1
-01	1		1	1		1												
TOTAL - GS	30	11	19	27	10	17							1		1	2	1	1
TOTAL - 0305	30	11	19	27	10	17							1		1	2	1	1
0312 GS-05	34	1	33	13		13	2	1	1				1		1	18		18
-04	19		19	1		1										18		18
-03	13		13	1		1										12		12
TOTAL - GS	66	1	65	15		15	2	1	1				1		1	48		48
0312 GW-03	1		1	1		1												
TOTAL - GW	1		1	1		1												

FEDERAL COMMUNICATIONS COMMISSION

MINORITY CODES AND SEX BY OCCUPATION CODE - PAY PLAN - GRADE A/O 07/18/76 PAGE 4 DPS117

OC-CD PP/GRADE	TOTAL NUMBER			NEGRO			SPANISH SURNAMED			AMERICAN INDIAN			ORIENTAL			ALL OTHERS		
	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F
TOTAL - 0312	67	1	66	16		16	2	1	1				1		1	48		48
0318 GS-05	7		7	5		5										2		2
-04	2		2	2		2												
TOTAL - GS	9		9	7		7										2		2
TOTAL - 0318	9		9	7		7										2		2
0318 GS-09	1		1													1		1
-08	13		13	5		5										8		8
-07	49	1	48	13		13										36	1	35
-06	40	1	39	18		18	2		2							20	1	19
-05	27	1	26	13		13										14	1	13
TOTAL - GS	130	3	127	49		49	2		2							79	3	76
TOTAL - 0318	130	3	127	49		49	2		2							79	3	76
0322 GS-05	3	1	2	1		1										2	1	1
-04	54	1	53	27		27	1		1							26	1	25
-03	33	2	31	22	1	21										11	1	10
-02	56	4	52	6		6										49	4	45
TOTAL - GS	146	8	138	56	1	55	1		1							88	7	81
0322 GW-02	2		2													2		2
-01	5		5	4		4										1		1
TOTAL - GW	7		7	4		4										3		3
TOTAL - 0322	153	8	145	60	1	59	1		1							91	7	84
0330 GS-16	1	1														1	1	
-15	1	1														1	1	
-14	1	1														1	1	
-13	1	1														1	1	
TOTAL - GS	4	4														4	4	
TOTAL - 0330	4	4														4	4	

FEDERAL COMMUNICATIONS COMMISSION

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OC-CD PP/GRADE	TOTAL NUMBER			NEGRO			SPANISH SURNAMED			AMERICAN INDIAN			ORIENTAL			ALL OTHERS		
	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F
0332 GS-12	1	1		1	1													
-11	1	1		1	1													
-08	4	4														4	4	
-07	1	1		1	1													
-06	1	1		1	1													
-05	5	1	4													5	1	4
-04	11		11	1		1										10		10
TOTAL - GS	24	9	15	5	4	1										19	5	14
TOTAL - 0332	24	9	15	5	4	1										19	5	14
0334 GS-14	3	3														3	3	
-13	13	13														13	13	
-12	18	13	5	2	1	1										16	12	4
-11	9	7	2	1		1										8	7	1
-09	11	9	2	1		1										10	9	1
-07	2	1	1													2	1	1
-05	3		3	1		1	1		1							1		1
TOTAL - GS	59	46	13	5	1	4	1		1							53	45	8
TOTAL - 0334	59	46	13	5	1	4	1		1							53	45	8
0335 GS-09	2		2	2		2												
-07	6		6	4		4										2		2
-06	2	1	1	1		1										1	1	
-05	1	1														1	1	
-04	4	2	2	2	1	2							1	1		1	1	
-03	1	1		1	1													
TOTAL - GS	16	5	11	10	1	9							1	1		5	3	2
TOTAL - 0335	16	5	11	10	1	9							1	1		5	3	2
0340 GS-18	2	2														2	2	
-17	3	3														3	3	
-16	1	1														1	1	
TOTAL - GS	6	6														6	6	
TOTAL - 0340	6	6														6	6	

FEDERAL COMMUNICATIONS COMMISSION

MINORITY CODES AND SEX BY OCCUPATION CODE - PAY PLAN - GRADE A/O 07/10/78 PAGE 6 DPS117

OC-CD PP/GRADE	TOTAL NUMBER			NEGRO			SPANISH SURNAMED			AMERICAN INDIAN			ORIENTAL			ALL OTHERS		
	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F
0341 GS-16	1	1														1	1	
-15	1	1														1	1	
-11	7		7													7		7
-09	10	1	9	2	1	1										8		8
TOTAL - GS	19	3	16	2	1	1										17	2	15
TOTAL - 0341	19	3	16	2	1	1										17	2	15
0342 GS-15	1	1														1	1	
TOTAL - GS	1	1														1	1	
TOTAL - 0342	1	1														1	1	
0343 GS-15	1	1														1	1	
-14	3	3														3	3	
-13	2	2														2	2	
-12	5	5														5	5	
-11	2	2		1	1											1	1	
-09	1		1													1		1
TOTAL - GS	14	13	1	1	1											13	12	1
TOTAL - 0343	14	13	1	1	1											13	12	1
0344 GS-07	1	1														1	1	
-05	1		1													1		1
TOTAL - GS	2	1	1													2	1	1
TOTAL - 0344	2	1	1													2	1	1
0345 GS-16	1	1														1	1	
-14	1	1														1	1	
-13	2	1	1													2	1	1
-12	1	1														1	1	
TOTAL - GS	5	4	1													5	4	1
TOTAL - 0345	5	4	1													5	4	1

FEDERAL COMMUNICATIONS COMMISSION

- MINORITY CODES AND SEX BY OCCUPATION CODE - PAY PLAN - GRADE A/O 07/10/78 PAGE 7 DPS117

OC-CD PP/GRADE	TOTAL NUMBER			NEGRO			SPANISH SURNAMED			AMERICAN INDIAN			ORIENTAL			ALL OTHERS		
	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F
0350 GS-03	1	1		1	1													
TOTAL - GS	1	1		1	1													
TOTAL - 0350	1	1		1	1													
0351 GS-06	1		1	1		1												
TOTAL - GS	1		1	1		1												
TOTAL - 0351	1		1	1		1												
0356 GS-04	1		1	1		1												
TOTAL - GS	1		1	1		1												
TOTAL - 0356	1		1	1		1												
0391 GS-14	2	2														2	2	
TOTAL - GS	2	2														2	2	
TOTAL - 0391	2	2														2	2	
0392 GS-07	1	1														1	1	
-06	4	3	1													4	3	1
-05	2	2														2	2	
TOTAL - GS	7	6	1													7	6	1
TOTAL - 0392	7	6	1													7	6	1
0393 GS-14	1	1														1	1	
-13	3	3														3	3	
-12	2	2														2	2	
-11	3	3														3	3	
-09	1	1														1	1	
-05	1		1													1		1
TOTAL - GS	11	10	1													11	10	1

FEDERAL COMMUNICATIONS COMMISSION

MINORITY CODES AND SEX BY OCCUPATION CODE - PAY PLAN - GRADE A/O 07/19/78 PAGE 8 DPS117

OC-CD PP/GRADE	TOTAL NUMBER			NEGRO			SPANISH SURNAMED			AMERICAN INDIAN			ORIENTAL			ALL OTHERS		
	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F
TOTAL - 0393	11	10	1													11	10	1
0394 GS-07	2		2													2		2
-06	5		5	3		3										2		2
-05	5	2	3	5	2	3												
-04	3		3	3		3												
TOTAL - GS	15	2	13	11	2	9										4		4
TOTAL - 0394	15	2	13	11	2	9										4		4
0501 GS-07	1		1	1		1												
-05	1		1	1		1												
-04	2	1	1	2	1	1												
-03	3		3	3		3												
TOTAL - GS	7	1	6	7	1	6												
TOTAL - 0501	7	1	6	7	1	6												
0505 GS-14	1	1														1	1	
TOTAL - GS	1	1														1	1	
TOTAL - 0505	1	1														1	1	
0510 GS-15	5	5														5	5	
-14	12	12		1	1											11	11	
-13	5	4	1	1		1										4	4	
-12	9	8	1	1	1											8	7	1
-11	11	9	2													11	9	2
-09	1	1														1	1	
TOTAL - GS	43	39	4	3	2	1										40	37	3
TOTAL - 0510	43	39	4	3	2	1										40	37	3
0520 GS-06	1		1													1		1
-05	1		1													1		1
-04	2		2													2		2

FEDERAL COMMUNICATIONS COMMISSION

OC-CD	PP/GRADE	TOTAL NUMBER			NEGRO			SPANISH SURNAMED			AMERICAN INDIAN			ORIENTAL			ALL OTHERS		
		ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F
	TOTAL - GS	4		4													4		4
	TOTAL - 0520	4		4													4		4
0525	GS-08	2		2	1		1										1		1
	-07	2	1	1	1	1											1		1
	-06	3	1	2	2	1	1										1		1
	-05	2		2	2		2												
	-04	1		1	1		1												
	TOTAL - GS	10	2	8	7	2	5										3		3
	TOTAL - 0525	10	2	8	7	2	5										3		3
0544	GS-08	1		1													1		1
	-06	1		1	1		1												
	-05	2		2	2		2												
	TOTAL - GS	4		4	3		3										1		1
	TOTAL - 0544	4		4	3		3										1		1
0560	GS-13	1	1														1	1	
	-12	3	2	1													3	2	1
	-09	1	1														1	1	
	TOTAL - GS	5	4	1													5	4	1
	TOTAL - 0560	5	4	1													5	4	1
0802	GS-15	2	2														2	2	
	TOTAL - GS	2	2														2	2	
	TOTAL - 0802	2	2														2	2	
0855	GS-18	1	1														1	1	
	-17	1	1														1	1	
	-16	5	5														5	5	
	-15	29	29		2	2								1	1		26	26	

FEDERAL COMMUNICATIONS COMMISSION

OC-CD PP/GRADE	TOTAL NUMBER			NEGRO			SPANISH SURNAMED			AMERICAN INDIAN			ORIENTAL			ALL OTHERS		
	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F
0855 GS-14	65	64	1	10	10					1	1					54	53	1
-13	83	83		9	9								2	2		72	72	
-12	76	76		5	5								4	4		67	67	
-11	65	65					2	2					1	1		62	62	
-09	29	28	1	2	1	1										27	27	
-07	24	23	1	1	1		1	1					1	1		21	20	1
-05	6	6														6	6	
TOTAL - GS	384	381	3	29	28	1	3	3		1	1		9	9		342	340	2
TOTAL - 0855	384	381	3	29	28	1	3	3		1	1		9	9		342	340	2
0856 GS-13	3	3														3	3	
-12	4	4														4	4	
-11	5	5														5	5	
-10	17	17		2	2											15	15	
-09	38	38		1	1											37	37	
-08	18	18		1	1		1	1								16	16	
-07	10	10		1	1								1	1		8	8	
-06	12	12					1	1								11	11	
-05	8	8					1	1								7	7	
-04	2	2														2	2	
TOTAL - GS	117	117		5	5		3	3					1	1		108	108	
TOTAL - 0856	117	117		5	5		3	3					1	1		108	108	
0896 GS-13	1	1														1	1	
-11	1	1														1	1	
TOTAL - GS	2	2														2	2	
TOTAL - 0896	2	2														2	2	
0904 GS-11	10	5	5	1	1		1		1	1		1				7	4	3
TOTAL - GS	10	5	5	1	1		1		1	1		1				7	4	3
TOTAL - 0904	10	5	5	1	1		1		1	1		1				7	4	3
0905 GS-18	1	1														1	1	
-17	4	4														4	4	

FEDERAL COMMUNICATIONS COMMISSION

OC-CD PP/GRADE	TOTAL NUMBER			NEGRO			SPANISH SURNAMED			AMERICAN INDIAN			ORIENTAL			ALL OTHERS		
	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F
0905 GS-16	9	9		1	1											8	8	
-15	61	55	6	3	3											58	52	6
-14	62	54	8	1	1											61	53	8
-13	89	79	10	7	5	2										82	74	8
-12	38	33	5													38	33	5
-11	29	23	6	4	2	2	1	1					1		1	23	20	3
TOTAL - GS	293	258	35	16	12	4	1	1					1		1	275	245	30
TOTAL - 0905	293	258	35	16	12	4	1	1					1		1	275	245	30
0935 GS-17	1	1														1	1	
-16	11	10	1													11	10	1
TOTAL - GS	12	11	1													12	11	1
TOTAL - 0935	12	11	1													12	11	1
0962 GS-09	1		1													1		1
-07	1		1													1		1
TOTAL - GS	2		2													2		2
TOTAL - 0962	2		2													2		2
0963 GS-12	1	1														1	1	
-11	3	2	1													3	2	1
-10	1	1		1	1													
-09	7	2	5				2	1	1							5	1	4
-08	7	1	6	2		2										5	1	4
-07	17	1	16	8		8	1		1							8	1	7
-06	41	1	40	25	1	24										22	6	16
-05	41	8	33	9	1	8							1		1	31	7	24
-04	32	10	22	11	3	8										21	7	14
-03	3		3	1		1										2		2
TOTAL - GS	159	33	126	57	6	51	3	1	2				1		1	98	26	72
TOTAL - 0963	159	33	126	57	6	51	3	1	2				1		1	98	26	72
0986 GS-11	1		1													1		1
-10	1		1	1		1												

FEDERAL COMMUNICATIONS COMMISSION

MINORITY CODES AND SEX BY OCCUPATION CODE - PAY PLAN - GRADE A/O 07/18/76 PAGE 12 OPS117

OC-CD PP/GRADE	TOTAL NUMBER			NEGRO			SPANISH SURNAMED			AMERICAN INDIAN			ORIENTAL			ALL OTHERS		
	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F
0986 GS-08	2		2													2		2
-07	12	4	8	3	1	2							1		1	8	3	5
-06	8	4	4	7	3	4										1	1	
-05	11	1	10	5	1	4										6		6
-04	5	2	3	3		3										2	2	
-03	3	1	2	2	1	1										1		1
TOTAL - GS	43	12	31	21	6	15							1		1	21	6	15
TOTAL - 0986	43	12	31	21	6	15							1		1	21	6	15
1046 GS-06	1		1				1		1									
TOTAL - GS	1		1				1		1									
TOTAL - 1046	1		1				1		1									
1081 GS-15	1	1														1	1	
-13	1	1														1	1	
TOTAL - GS	2	2														2	2	
TOTAL - 1081	2	2														2	2	
1082 GS-12	1		1													1		1
-11	2	1	1													2	1	1
-09	2		2													2		2
TOTAL - GS	5	1	4													5	1	4
TOTAL - 1082	5	1	4													5	1	4
1084 GS-13	1	1														1	1	
TOTAL - GS	1	1														1	1	
TOTAL - 1084	1	1														1	1	
1087 GS-07	1	1														1	1	
-06	1		1													1		1

FEDERAL COMMUNICATIONS COMMISSION

OC-CD PP/GRADE	TOTAL NUMBER			NEGRO			SPANISH SURNAMED			AMERICAN INDIAN			ORIENTAL			ALL OTHERS		
	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F
TOTAL - GS	2	1	1													2	1	1
TOTAL - 1087	2	1	1													2	1	1
1101 GS-13	1	1																
-12	1	1														1	1	
-11	11	4	7	1		1										1	1	
-09	16	3	13	6		6							1	1		9	3	6
-07	7	2	5	1	1											10	3	7
-05	7	3	4	2	1	1										6	1	5
TOTAL - GS	43	14	29	10	2	8							1	1		5	2	3
TOTAL - 1101	43	14	29	10	2	8							1	1		32	11	21
1102 GS-15	1	1														32	11	21
-12	1	1		1	1													
-11	1	1														1	1	
-09	1	1														1	1	
-07	2	1	1													1	1	
-05	1	1														2	1	1
TOTAL - GS	7	6	1	1	1											1	1	
TOTAL - 1102	7	6	1	1	1											6	5	1
1105 GS-07	1	1		1	1											6	5	1
-09	1		1	1		1												
TOTAL - GS	2	1	1	2	1	1												
TOTAL - 1105	2	1	1	2	1	1												
1106 GS-04	1		1	1		1												
TOTAL - GS	1		1	1		1												
TOTAL - 1106	1		1	1		1												
1130 GS-15	3	3														3	3	

FEDERAL COMMUNICATIONS COMMISSION

OC-CD PP/GRADE	TOTAL NUMBER			NEGRO			SPANISH SURNAMED			AMERICAN INDIAN			ORIENTAL			ALL OTHERS		
	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F
1130 GS-14	6	6														6	6	
-13	5	5														5	5	
-12	2	2					1	1								1	1	
-11	2		2													2		2
-09	3		3	1		1										2		2
TOTAL - GS	21	16	5	1		1	1	1								19	15	4
TOTAL - 1130	21	16	5	1		1	1	1								19	15	4
1160 GS-12	1	1														1	1	
TOTAL - GS	1	1														1	1	
TOTAL - 1160	1	1														1	1	
1301 GS-15	1	1														1	1	
-11	1	1														1	1	
TOTAL - GS	2	2														2	2	
TOTAL - 1301	2	2														2	2	
1410 GS-12	1		1													1		1
-09	2		2													2		2
TOTAL - GS	3		3													3		3
TOTAL - 1410	3		3													3		3
1411 GS-05	1		1	1		1												
-02	1		1	1		1												
TOTAL - GS	2		2	2		2												
TOTAL - 1411	2		2	2		2												
1412 GS-11	1	1														1	1	
TOTAL - GS	1	1														1	1	

FEDERAL COMMUNICATIONS COMMISSION

OC-CD PP/GRADE	TOTAL NUMBER			NEGRO			SPANISH SURNAMED			AMERICAN INDIAN			ORIENTAL			ALL OTHERS		
	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F
TOTAL - 1412	1	1														1	1	
1421 GS-07	1	1														1	1	
TOTAL - GS	1	1														1	1	
TOTAL - 1421	1	1														1	1	
1515 GS-14	3	3														3	3	
-13	2	2														2	2	
-11	1	1														1	1	
-09	1	1														1	1	
TOTAL - GS	7	7														7	7	
TOTAL - 1515	7	7														7	7	
1520 GS-09	1		1													1		1
TOTAL - GS	1		1													1		1
TOTAL - 1520	1		1													1		1
1530 GS-12	1		1															
-11	2	1	1													1		1
TOTAL - GS	3	1	2													2	1	1
TOTAL - 1530	3	1	2													3	1	2
1531 GS-05	1		1	1		1										3	1	2
-04	2		2	1		1	1		1									
TOTAL - GS	3		3	2		2	1		1									
TOTAL - 1531	3		3	2		2	1		1									
1654 GS-12	1	1		1	1													
-09	1	1		1	1													

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OC-CD PP/GRADE	TOTAL NUMBER			NEGRO			SPANISH SURNAMED			AMERICAN INDIAN			ORIENTAL			ALL OTHERS		
	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F
TOTAL - GS	2	2		2	2													
TOTAL - 1654	2	2		2	2													
1810 GS-13	1	1		1	1													
-09	1	1														1	1	
TOTAL - GS	2	2		1	1											1	1	
TOTAL - 1810	2	2		1	1											1	1	
2003 GS-10	1	1														1	1	
TOTAL - GS	1	1														1	1	
TOTAL - 2003	1	1														1	1	
2005 GS-06	2	2		2	2													
-05	2	2		2	2													
TOTAL - GS	4	4		4	4													
TOTAL - 2005	4	4		4	4													
3502 WG-04	1	1		1	1													
-03	3	3		3	3													
-02	3	3		3	3													
TOTAL - WG	7	7		7	7													
TOTAL - 3502	7	7		7	7													
3506 YY-	8	1	7	5		5							1	1		2		2
-00	29	15	14	14	9	5	5	3	2	1	1					9	2	7
TOTAL - YY	37	16	21	19	9	10	5	3	2	1	1		1	1		11	2	9
TOTAL - 3506	37	16	21	19	9	10	5	3	2	1	1		1	1		11	2	9

FEDERAL COMMUNICATIONS COMMISSION

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OC-CD PP/GRADE	TOTAL NUMBER			NEGRO			SPANISH SURNAMED			AMERICAN INDIAN			ORIENTAL			ALL OTHERS		
	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F
3509 YV-00	1	1														1	1	
TOTAL - YV	1	1														1	1	
TOTAL - 3509	1	1														1	1	
4401 WP-20	1	1		1	1													
-14	1	1		1	1													
-05	1		1	1		1												
TOTAL - WP	3	2	1	3	2	1												
TOTAL - 4401	3	2	1	3	2	1												
4402 WP-15	1	1		1	1													
-12	2	2		2	2													
-09	1		1	1		1												
-08	1	1		1	1													
TOTAL - WP	5	4	1	5	4	1												
TOTAL - 4402	5	4	1	5	4	1												
4414 WP-10	1	1		1	1													
TOTAL - WP	1	1		1	1													
TOTAL - 4414	1	1		1	1													
4416 WP-08	1	1																
-06	1	1		1	1											1	1	
TOTAL - WP	2	2		1	1											1	1	
TOTAL - 4416	2	2		1	1											1	1	
4417 WP-16	2	2		2	2													
-09	6	6		6	6													
TOTAL - WP	8	8		8	8													

FEDERAL COMMUNICATIONS COMMISSION

OC-CD PP/GRADE	TOTAL NUMBER			NEGRO			SPANISH SURNAMED			AMERICAN INDIAN			ORIENTAL			ALL OTHERS		
	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F	ALL	M	F
TOTAL - 4417	8	8		8	8													
4425 WP-24	1	1		1	1													
TOTAL - WP	1	1		1	1													
TOTAL - 4425	1	1		1	1													
4742 WG-09	1	1														1	1	
-08	4	4		1	1		1	1								2	2	
-06	2	2														2	2	
-05	2	2		1	1											1	1	
TOTAL - WG	9	9		2	2		1	1								6	6	
TOTAL - 4742	9	9		2	2		1	1								6	6	
4749 WG-10	1	1														1	1	
-09	1	1														1	1	
-07	1	1					1	1										
TOTAL - WG	3	3					1	1								2	2	
TOTAL - 4749	3	3					1	1								2	2	
5703 WG-05	3	3		2	2											1	1	
TOTAL - WG	3	3		2	2											1	1	
TOTAL - 5703	3	3		2	2											1	1	
6907 WG-05	1	1														1	1	
TOTAL - WG	1	1														1	1	
TOTAL - 6907	1	1														1	1	
TOTAL - FCC	2095	1214	881	480	144	336	27	15	12	4	3	1	19	13	6	1564	1039	525

FEDERAL COMMUNICATIONS COMMISSION

As of May 23, 1976

Occupation Code	Occupational Series Title	Number	Grade Range
080	Security Administration	3	GS-9-14
110	Economist	23	GS-7-15
160	Equal Opportunity	4	GS-11-15
201	Personnel Management	4	GS-13-15
203	Personnel & Clerical and Assistance	7	GS-4-9
212	Personnel Staffing	5	
221	Position Classification	4	GS-9-14
230	Labor Management & Employee Relations	2	GS-11-13
235	Employee Development	3	GS-9-13
301	General Clerical & Administrative	176	GW-1-2 GS-1-17
305	Mail and File	29	GS-2-7
312	Clerk-Stenographer and Reporter	66	GS-3-5
316	Clerk, Dictating Machine Transcribing	1	GS-5
318	Secretary	134	GS-5-9
322	Clerk-Typist	150	GW-1 GS-2-5
330	Digital Computer Systems Administration	4	GS-13-16
332	Computer Operation	25	GS-3-12
334	Computer Specialist	59	GS-5-14
335	Computer Aid & Technician	14	GS-4-9
340	Program Management	6	GS-16-18
341	Administrative Officer	19	GS-9-15
342	Office Services Management	1	GS-15
343	Management Analysis	14	GS-9-15
344	Management Clerical and Assistance	2	GS-5-7
345	Program Analysis	6	GS-7-16
350	Office Machine Operating		GS-3
356	Data Transcriber	1	GS-4
391	Communications Management	1	GS-14
392	General Communications	6	GS-5-7
393	Communications Specialist	11	GS-9-14
394	Communications Clerical	14	GS-4-7
501	General Accounting Clerical and Administrative	7	GS-3-7
505	Financial Management	1	GS-14
510	Accounting	43	GS-9-15

Occupation Code	Occupational Series Title	Number	Grade Range
520	Accounts Maintenance Clerical	4	GS-4-6
525	Accounting Technician	10	GS-4-8
544	Payroll	3	GS-5-8
560	Budget Administration	5	GS-11-13
802	Engineering Technician	2	GS-15
855	Electronics Engineering	388	GS-5-18
856	Electronics Technician	121	GS-4-13
896	Industrial Engineering	2	GS-11-13
904	Law Clerk	11	GS-11
905	General Attorney	294	GS-11-18
935	Administrative Law Judge	12	GS-16-17
962	Contact Representative	2	GS-7-9
963	Legal Instruments Examining	162	GS-3-12
986	Legal Clerk and Technician	35	GS-3-11
1046	Clerk-Translator	1	GS-8
1081	Public Information	2	GS-13-15
1082	Writing and Editing	5	GS-9-12
1084	Visual Information	1	GS-13
1087	Editorial Assistance	2	GS-6-7
1101	General Business & Industry	42	GS-5-15
1102	Contract & Procurement	7	GS-7-14
1105	Purchasing	2	GS-5-7
1106	Procurement Clerical and Assistance	1	GS-3
1130	Public Utilities Specialist	21	GS-9-15
1160	Financial Analyst	1	GS-12
1301	General Physical Science	2	GS-11-15
1410	Librarian	3	GS-9-12
1411	Library Technician	1	GS-4
1412	Technical Information	1	GS-11
1421	Archives Technician	1	GS-7
1515	Operations Research	8	GS-9-14
1520	Mathematics	1	GS-9
1530	Statistician	3	GS-11-12
1531	Statistical Assistant	3	GS-4
1654	Printing Management	2	GS-7-12
1810	General Investigating	2	GS-7-13
2003	Supply Program Management	1	GS-9
2005	Supply Clerical & Technician	4	GS-5-6

Mr. WILEY. I think that our own record is improving. It is certainly not as good as I would like it to be and I might say particularly so in the Chicano area, but across the board I think we have done well in the female area. We are improving.

I have recently met with all my Bureau office chiefs to personally stress my commitment in this area and my expectation that this will be carried forth in the recruitment policies. We have not hired anybody or very few people since January 1 simply because of the freeze we put on recruitment and because we have not had the funds, frankly. We have about 180 vacancies at the Commission that we cannot fill so that has put a crimp in a lot of our programs and certainly in this area, too, but I do want you to know that we can publicly state that I think this is something that our Agency should be doing if we expect our licensees to do it.

Mr. WIRTH. I could not agree more. There is an Old Irish saying: "Stay in your own backyard and make sure that that is tidy before charging out some place else."

Mr. WILEY. I agree with that, and we have some room to go yet in this area.

Mr. WIRTH. One final thing. What is the situation with the freeze and what do you anticipate?

Mr. WILEY. The hiring freeze. Well, hopefully if the Congress recently allocated some additional funds for us and this is not rescinded by OMB, we would hope that in October we would be able to start at least getting ourselves back up to full strength.

Mr. WIRTH. And you were suggesting that when you have those additional 150 or 180 positions to fill that you are going to have an aggressive program internally.

Mr. WILEY. That is what I have suggested to my bureau office chiefs. We have a particular difficulty, I might say, in the engineering area. As you know, much of our Commission contains both legal and engineering professionals, and engineering has not been an area which many minorities have chosen as a life's work so we have not had as many applicants or as many opportunities but we are going to just have to work harder.

Mr. WIRTH. Thank you, Mr. Chairman. Thank you, Mr. Wiley.

Mr. VAN DEERLIN. Majority counsel, Mr. Shooshan.

Mr. SHOOSHAN. Thank you, Mr. Chairman.

I would like to return, if I could, Chairman Wiley, to the question asked you by Chairman Van Deerlin with regard to the staff of the Commission dedicated to working on EEO matters.

As I understand it, you have your responsibility divided into two sections, one unit that is located within the General Counsel's office and there are three positions there, is that correct?

Mr. WILEY. That is right, Mr. Shooshan.

Mr. SHOOSHAN. Now you cooperated with the subcommittee by providing us with some information by letter on April 26. The three positions are noted there. I know one, Mr. McKee has subsequently moved out into I believe Commissioner Hooks' office so that leaves you with one vacancy among those three. When do you anticipate that will be filled?

Mr. WILEY. I believe the person has been selected. I notice the trade

press carried an account of it so it must be correct. So we are going to have that position.

Mr. SHOOSHAN. Who makes that decision? Who is responsible for the selection?

Mr. WILEY. Mr. Monagas is responsible and perhaps in cooperation with General Counsel. I did not make it.

Mr. SHIBEN. The person that is filling that position is coming out of my staff, Patricia Russell.

Mr. WILEY. It was a Black female attorney with the Commission.

Mr. SHOOSHAN. There are also three positions in the Broadcast Bureau. As of this letter dated April 26 there was one vacancy there. Is that filled?

Mr. SHIBEN. That was filled about a week ago by Mary James who is now in the EEO specialist category. We upgraded.

Mr. SHOOSHAN. In 1974, as I recall it, there was a report issued by the U.S. Commission on Civil Rights on regulatory agencies and what they were doing with EEO. One of the recommendations made in that study pertaining to the FCC was the suggestion that the industry EEO unit be moved out of the General Counsel's office where at least the Civil Rights Commission felt it had been sort of submerged and placed directly under the Chairman's office. Has that suggestion been considered formally by the Commission?

Mr. WILEY. I don't know whether there have been any specific recommendations up on the staff. I think we have taken a look at it. I know I have heard it discussed from time to time in my presence and I think the feeling has been, generally speaking, that it is not submerged, that we cannot have it in the Chairman's office as I understand it. At least the EEO office has been given considerable discretion to operate as it deems appropriate and I am not aware of any area in which their views have been submerged.

Mr. SHOOSHAN. Recognizing that it would be difficult, as you say, to have every unit within the Commission reporting directly to the Chairman but also observing your commitment to equal opportunity which you restated here today, what are your personal feelings as Chairman as to whether it would be to the advantage of the Commission and the licensees?

Mr. WILEY. Mr. Shooshan, my style of leadership in the Commission is to work very closely with the staff and I personally don't see any particular advantage in it. I think it would be cosmetic at best. The EEO unit has not as much as suggested a change to me and it operates as if it reported directly to me.

Mr. SHOOSHAN. And to the rest of the Commissioners as well?

Mr. WILEY. Absolutely. If there is a problem in this area, and I will in light of your question discuss it further with our new General Counsel, who has just taken over as of yesterday, and Mr. Mongas, but I am not aware of the specific problem that would require a change in it.

Mr. SHOOSHAN. Getting back to your recent EEO rules, and I have a more specific question in a minute but I would like to get you, if you could, to respond to one of the criticisms that was level against those rules by again a spokesman for the Commission on Civil Rights. He said:

I submit the rules issued by the Commission do not meet the challenge of our 1974 report. They are vague, not specific and they are good faith efforts oriented, not result oriented. These guidelines have been two years in the making and yet they do not represent a significant improvement on the status quo. Substantial revision is necessary if equal employment opportunity in the broadcasting industry is to be assured.

Mr. WILEY. Let me ask Mr. Shiben to answer that in the first instance and then perhaps I can add a word or two.

Mr. SHIBEN. Number one, I disagree with the gentleman from the U.S. Commission on Civil Rights for several reasons. The first is just because he says it is right does not make it right and is wrong. Indeed, I think our new report and order is a significant improvement over what we had before. Most affirmative action programs are designed to upgrade the recruitment and promotional efforts of licensees or regulated industries and that is what our program is.

Number two, concerning enforcement of the program, you have to have certain information in the first instance to determine whether licensees are making a reasonable good faith effort in this area. That is what our program is also designed to do. The first part of the program upgrades the overall recruitment promotional opportunities and the second part of the program is designed to gather more information to make sure that they are following the program.

Mr. SHOOSHAN. Let me follow up that response, Mr. Shiben, by asking Chairman Wiley or yourself again, getting back to the Chairman's question of the requirement for filing written affirmative action plans and, again, returning to yet another person from the Commission on Civil Rights, which seems to be one of your critics in this area, at least today anyway, responding to the proposed exemption of stations with less than 10 employees.

This individual says:

> The issue is not whether a licensee files a report on any EEO program. The issue is whether the licensee undertakes the affirmative action procedures about which it is to report. Exempting stations with less than 10 fulltime employees from the filing requirement actually means that those licensees would not have to examine their work forces for underutilization of women and minorities.

Mr. SHIBEN. How do you determine underutilization but by looking at numbers? As we have explained on numerous occasions, if you have a station with an average of seven employees, and we can assume that the average size of the station is seven, seven and a half, and the average minority work force or population in the United States is probably around 11 or 12 percent, underutilization is a fraction of an employee. It is .35 or .50 or .78 percent.

How do you determine underutilization when you have a small station and a small labor market to begin with? There is just no way an affirmative action program is meaningful.

Now you can take another situation which our annual employment reports will catch. You have a station with 10 employees in an area with a substantial minority population. Under our procedures that station will still be kicked out for review and if there is a total absence consistently of minority employees he is going to get an inquiry.

Mr. SHOOSHAN. Well, when you suggest that it is insignificant to require written affirmative action plans be filed with stations under 10 employees, let me again read from the comments filed by the Corpora-

tion for Public Broadcasting on this question. CPB strongly opposes the Commission's proposal to exempt broadcasters with 10 full-time employees. It says that CPB feels that the FCC has ignored the fact that significant percentages of broadcasters would be excluded from regulation in this area, small broadcast stations have obligations to provide diverse programing, the availability of discovery tools for the public would be lessened if not abolished and the crucial fact that the small stations are the most important or only significant real training grounds to again echo what Chairman Van Deerlin said.

Mr. WILEY. I will give basically the same answer I did to Mr. Van Deerlin. We are not exempting these stations from the scope of our regulations. We are going to continue to have the kind of vigorous oversight at renewal time of their applications. We are going to take a look at their 395's to determine whether or not there is an underrepresentation, and I must say in these stations that have a different feeling or have been given any kind of a different understanding, they are going to be sadly mistaken in that regard.

We simply have taken, I think, a reasonable step, one in line with the recommendation that we received from our own staff I might say, in light of the limited enforcement capability that we have to go where most of the jobs are as far as filing an affirmative equal employment program—this involves about 85 percent of the jobs. No. 2, simply because we didn't think this amount of paperwork on small stations was required. No. 3, because as Mr. Shiben indicated statistically it is relatively meaningless to deal with those stations in connection with the affirmative equal employment program but we are going to continue to have the oversight at renewal time on all stations that are reporting now five and more employees.

Mr. SHOOSHAN. I think it is significant that your own staff made this recommendation but what I am also pointing out is that the Commission on Civil Rights, on the one hand, and the Corporation for Public Broadcasting on the other, who you think would be at odds on this, seem to agree about the problem that would be created by this.

Let me point, if I could, in the direction of the question and just say did you consider at all in light of the very strong comments filed by CPB and others and in light of what Chairman Wiley said earlier about a perhaps stronger or deeper commitment to the public on the part of public television and radio stations to adopt a separate standard in terms of filing for public broadcasting stations?

Mr. WILEY. We have had essentially the same rules for both commercial and noncommercial stations and I would say, Mr. Shooshan, that people of good will and good intentions could agree on this one particular aspect of our program. I have regretted the fact that it has been emphasized, I think, too strongly by some people and has basically undermined the public perception or some people's perception of the strength of our program overall. We felt this was a good step, we felt it would assist us. I can understand that some people could quite reasonably disagree. I think the main thing is not so much what the broadcasters' stated intentions may be but what the results of their program actually are and that is what we are going to be monitoring.

Mr. SHOOSHAN. That goes to my one last question, Mr. Chairman, and that is the question of how you measure results. Again, there was

some dissatisfaction expressed at the time that your new rules were being considered about the adequacy of the 395 form itself. Chairman Van Deerlin, among others, wrote a letter to you suggesting inadequacies he say and there were comments filed with you by the Civil Rights Commission which said—let me read again:

> Much has been made of the FCC 395 data indicating that women are moving into managerial positions. However, data from our study reveals that very few women reported as officials and managers actually hold positions which allow them to set broadcast policies, have overall responsibility for the execution of those policies and to direct individual departments.

In other words, perhaps the Commission's own form is not specific enough in ascertaining whether there has been this upward movement.

Mr. WILEY. We took a very careful look at that issue and I think Mr. Shiben would like to give a detailed response.

Mr. VAN DEERLIN. If that is going to be detailed, perhaps it could hold for 10 minutes while the Chairman scrambles to make a quorum call and comes back.

Mr. WILEY. Absolutely. That will give him a chance to think of his answer.

Mr. SHIBEN. That might be more dangerous.

Mr. SHOOSHAN. We could do it for the record.

Mr. VAN DEERLIN. Mr. Shooshan suggested you could submit it for the record and you would then be free to depart.

Mr. SHIBEN. We would be glad to do that on the 395. Suffice it to say, we can give you that answer.

[The following letter was received for the record:]

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., August 23, 1976.

HON. LIONEL VAN DEERLIN,
Chairman, Subcommittee on Communications, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: During the course of the Equal Employment Opportunities hearing on August 10, 1976, Mr. Shooshan, Counsel to the Subcommittee, raised a question concerning the Commission's decision not to alter its Annual Employment Report (FCC Form 395) in light of comments filed by the Commission on Civil Rights and the Corporation for Public Broadcasting (CPB). The following response is being submitted for the record.

As you may be aware, this reporting form was one area of concern on which the Commission requested comment in Docket No. 20550. Of the comments received, the most frequently voiced recommendation was to define more narrowly the present job categories. CPB, in fact, urged that we adopt its proposed employment profile reporting form which includes some 75 "typical" job titles. While there may be merit in having information on each specific position, the Commission was not persuaded that such data would be of significant benefit in its EEO oversight responsibilities. As to the accuracy with which employees are classified, the Commission believes that its instructions to Form 395 are sufficiently detailed to provide each licensee with adequate information to determine the appropriate job classifications at a particular station. In this regard, where the Form 395 job categories are not particularly relevant to those positions usually filled by persons at broadcast stations, the instructions set forth job titles that should be included. For instance, in the Professional job category, broadcast licensees are instructed to include the following:

> Persons engaged in the writing, preparation and production of programming. Includes continuity and news writers, or editors, producers and directors of programs, floor directors, announcers, singers, actors, music librarians and those in similar positions.

Additionally, the Commission believes that revision of the Form 395 is unnecessary in light of the sample EEO program adopted in its *Report and Order*, FCC 76-429. Section VII of the sample program provides for the filing of updated 395 forms by licensees, employing less than 50 fulltime employees and the filing by all licensees having more than 50 employees of a work force analysis which must list all job titles within each Form 395 job category designating the sex and race of the incumbents. It is our opinion that the other nine sections of the program, together with various letters of inquiry and EEO reporting requirements, will provide sufficient detail of job titles and functions. Thus, the Commission, upon careful consideration of all the comments and reply comments on this matter, decided that the current Form 395 should be retained without alternation.

I trust that the forfgoing is responsive. Should there be need for additional information, please advise me.

Sincerely,

RICHARD E. WILEY,
Chairman.

Mr. VAN DEERLIN. I will return promptly for our second witness. Thank you very much.

Mr. WILEY. Thank you, Mr. Chairman. Thank you, Mr. Shooshan.

[Brief recess.]

Mr. VAN DEERLIN. The subcommittee will reconvene.

Our next witness is Ethel B. Walsh, Vice Chairman for the Equal Employment Opportunity Commission here in Washington.

Mrs. Walsh.

STATEMENT OF ETHEL B. WALSH, VICE CHAIRMAN, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, ACCOMPANIED BY ISSIE JENKINS, DEPUTY GENERAL COUNSEL

Ms. WALSH. Good morning, Chairman Van Deerlin.

I welcome this opportunity to testify before your subcommittee on behalf of the Equal Employment Opportunity Commission on the subject of discrimination in employment by public broadcasters.

I am accompanied by Deputy General Counsel, Ms. Issie Jenkins.

There are over a thousand public broadcasters in the United States that fall into four main categories: (1) statewide networks; (2) local school systems; (3) universities which may be public or private; and (4) community nonprofit broadcasters.

Although the Federal Government regulates discrimination by public broadcasters through a number of laws and regulations, I suggest that what may appear to be a complex web of regulatory mechanisms is, in fact, unified by a common set of legal principles. The administrative mechanisms of the Federal Government are the following.

The Equal Employment Opportunity Commission is the key enforcement agency administering title VII of the Civil Rights Act of 1964, as amended, which makes it illegal to discriminate in employment. We receive complaints filed by or on behalf of aggrieved individuals alleging discrimination. In addition, each member of our Commission may initiate a charge. Once a complaint is filed, we conduct an investigation to determine whether there is "reasonable cause" to believe that discrimination exists. If we find "reasonable cause" we attempt to eliminate the discrimination by voluntary conciliation. If that voluntary conciliation fails, we have the authority to bring suit in

Federal district court. That authority extends to private nonprofit public broadcasters as well as private universities.

It should be noted that not all of the existing public radio and television broadcasters fall within the jurisdiction of the EEOC. Smaller stations having less than 15 employees do not come within our jurisdiction. The Commission's records indicate that 38 charges have been filed against 16 public television broadcasters and 4 public radio stations have 5 charges of discrimination pending against them. These charges are at various states of the administrative process contained in title VII.

As a result of its finding of reasonable cause to believe discrimination had occurred in one charge filed against a major educational public broadcasting television and radio station, the Commission filed a complaint in Federal district court in September 1975. That case was resolved by means of a consent decree which provided, among other things, for a change in the recruitment practices and application process of the station to insure that black and female applicants receive the same opportunities as other applicants and elimination of most of the subjective evaluation which previously existed. The consent decree set up specific goals to be achieved by 1978 in the station's black and female work force.

In the case of public universities and State and local school systems, we are required to refer cases to the Department of Justice for possible litigation when voluntary conciliation efforts fail.

The Department of Justice has the power to bring a law suit based upon its own determination that there is a pattern or practice of discrimination by a State or local government entity based upon a referral from EEOC. Public broadcasters under the aegis of State and local governments are, of course, subject to Justice Department jurisdiction.

The Department of Health, Education, and Welfare has an extensive program of funding educational broadcasters. Under title VI of the Civil Rights Act of 1964, recipients of such funds must conduct their activities in a nondiscriminatory fashion. This applies to some employment practices of educational broadcasters, but not all. Title VI normally does not apply to employment unless the creation of employment is the primary purpose of the funding. However, before-the-camera and other similar jobs are perceived as part of the "services" purchased by the funding and therefore are covered by title VI.

To the extent that universities receiving educational broadcasting funds from the Federal Government are perceived as "contractors" they are subject to the regulatory activities of the Office of Federal Contract Compliance Programs under Executive Order 11246.

The Federal Communications Commission of course has the ultimate licensing authority over all broadcasters—public and private. FCC has interpreted its licensing mandate to include examination for the existence of discrimination in the employment practices of its licensees.

The Corporation for Public Broadcasting dispenses public funds to educational broadcasters. We would urge that the CPB pursue policies that assure that such funds are utilized in a nondiscriminatory fashion.

In attempting to determine whether the administrative mechanism has worked effectively to identify and eliminate employment discrimination, we find the language of both the House and Senate committees when they gave enforcement power in 1972 very instructive. The legislative history of title VII indicates that the House Committee on Education and Labor found that the voluntary compliance mechanism failed because the average employer lacked the technical perception to recognize that the system was discriminatory. The committee said that the average employer focused on intent rather than on employment systems with an exclusionary impact, which could not be justified by a business necessity standard.

While your committee may want to examine in detail the functioning of the various administrative mechanisms dealing with employment discrimination by public broadcasters, we at EEOC would like to suggest that the essential element necessary in making the Federal Government's compliance mechanism work is uniformity of the legal principles which are applied by the agencies; with the principles established by the Federal courts. The Federal courts have clearly established that employment discrimination is, by definition, class-wide. When a court finds that an employer's practices have harmed an individual, they will order action to eliminate that practice, not just against the individual but against all members of the class to which that individual belongs.

The landmark Supreme Court decision of *Griggs* versus *Duke Power* further established that it does not matter whether an employer intends to discriminate; what matters are the consequences of the employer practice. If a public broadcaster has a policy or practice, a mechanism or system, which is fairly and impartially administered and which is neutral in its intent, which nevertheless has what the courts call a disparate effect on members of a group of females or minorities, then that practice constitutes strong evidence of discrimination.

The courts have also indicated that statistics constitute strong evidence of discriminatory practice. If the proportion of minorities or females in some job classification is considerably lower than their presence in the work force or in the population of the surrounding community, then the burden of proof is on the employer to show that this disproportion is not the result of discrimination. There are, of course, other principles which may offset some of these rulings.

An employer may claim compelling business necessity to justify a policy which has a disparate effect on a protected group, but that employer must demonstrate that no alternative nondiscriminatory practice can achieve the same results. Keep in mind, however, that the courts have interpreted "business necessity" very narrowly. Basically, they require overriding evidence that an exclusionary practice is not only "essential to the safe and efficient operation of the business" but they also may require a showing that there was no alternative which could achieve the same results without a discriminatory impact.

I would also like to point out that the financial remedies for discrimination awarded by the courts have certainly stimulated the employers to get their affirmative action plans off the drawing board and into effect.

Obviously, in view of recent court awards, the most palatable and least expensive way to achieve equal employment opportunity is through voluntary compliance. While the Equal Employment Opportunity Commission vigorously pursues enforcement of the antidiscrimination laws, we recognize that concurrent extensive voluntary compliance is essential to eradicate employment discrimination.

It therefore is important to emphasize that this legislation was enacted as the remedy for historical practices and does not require proof of intent to discriminate.

Further, it is no longer sufficient to eliminate deliberate, malicious acts against minorities and women. What is required is changing employment systems that have an exclusionary impact on minorities and women.

Finally, the public broadcasting employer should be aware that private individuals can and, in increasing numbers, are initiating lawsuits even where the Government does not.

In conclusion, permit me to take a few moments to examine with you the larger dimension of the question. Discrimination, whether it be on the basis of race, color, sex, national origin, religion, age, physical disability, or any other basis cannot and should not be tolerated in the United States of America. All discrimination has its roots in the same types of bias. Only the victims change.

Our Commission was legislated to protect certain classes against such bias in an employment situation. The agencies previously mentioned share that responsibility. However, all of us here realize that Government alone just cannot do the whole job that the American people are demanding be done. Only by anticipating areas of social concern and developing and inaugurating effective programs to meet these needs can employers preserve a larger measure of their traditional independence, while at the same time responding to the clear demands of the American people.

I would like to urge that the corporate employers and the educational administrators and the public officials fully share this responsibility.

Thank you, Mr. Chairman.

Mr. VAN DEERLIN. Thank you, Mrs. Walsh.

I suppose that the criticism most frequently leveled at EEOC is its inability or seeming inability to keep up with a caseload which just seems at times to be running away with it. You have indicated very specifically on page 2 that in the area that we are examining you have records of 38 charges filed against 16 television broadcasters—that is, public television—and 4 stations have 5 charges of discrimination in the radio field, a total of 43.

Ms. WALSH. Yes.

Mr. VAN DEERLIN. On the average, how long have these been pending?

Ms. WALSH. I have been trying to trace that back and unfortunately I have not had time to go through all of them because we have to go through the whole computer kickout. Now the cases referred to are those that are pending. I have not made any reference to those that are closed because they would be substantially more. One of those I know has been pending since 1972. I would assume that, on the average of

other pending cases, it can range anywhere from a year, 18 months, to 2 years depending on the date of the charge. I think there is no question that our backlog is certainly one of the areas where we have found the most criticism.

Mr. VAN DEERLIN. So that in the instance of an individual complaint if the complainant has any talent, any ability at all, it is almost a foregone conclusion that by the time the complaint has run its course at the EEOC that complainant will have found employment somewhere else.

Ms. WALSH. No; not necessarily, Mr. Chairman.

Mr. VAN DEERLIN. Unless it is a matter of promotion.

Ms. WALSH. No; because when you talk in terms of charges, a lot of it varies, obviously, from one office to another. We certainly have been voting at the Commission on cases for litigation that were filed in 1975. That means between 1975 and 1976 they have completed the entire administrative process, they have failed conciliation, they have been referred to and reviewed by the General Counsel's office and they are being voted on for litigation. So I cannot use that as a rule of thumb for all 38. I can have those charges listed for you and submitted for the record.

Mr. VAN DEERLIN. I am not sure that even that would be necessary.

Ms. WALSH. No, I know, but it might give you some idea of the current situation.

Mr. VAN DEERLIN. I was wondering, too, if you have knowledge as to how widely scattered they were or whether there have been multiple charges against the same broadcasters?

Ms. WALSH. Our coding would only indicate the district office in which it had been filed so they are pretty well scattered across country with some emphasis in California.

Mr. VAN DEERLIN. Some emphasis in California.

Ms. WALSH. We are only talking something like one station has 16 in California.

Mr. VAN DEERLIN. You mean that of these 43 total complaints, or 38 if it is the television station—I assume it must be a television station.

Ms. WALSH. Yes, sir, that would have to be one of the larger ones or it would not come under our jurisdiction.

Mr. VAN DEERLIN. You mean of the 38, 16 are against a single broadcaster?

Ms. WALSH. This is what the statistics show, yes.

Mr. VAN DEERLIN. I am moved to inquire to identify the broadcaster, the licensee, who has had 16 complaints, not that this would be conclusive evidence, of course, but——

Ms. WALSH. Mr. Chairman, I can only submit that to you on a confidential basis under the confidentiality clause of the statute. I can't announce it here.

Mr. VAN DEERLIN. Good heavens.

Ms. WALSH. No, until a charge is actually filed in court under the confidentiality statement we cannot disclose either the respondent or the charging party but I can certainly get it to you in writing.

Mr. VAN DEERLIN. Thank you.

That then rather reduces the impact of your remaining statistics.

Ms. WALSH. Yes, and I think the reason for this is the very small group that would come under our jurisdiction in this particular area. I think as Chairman Wiley pointed out there was something like only 170 stations that he indicated had any large employment. Under our statute any station under 15 would not even come within our jurisdiction. Further, any station with less than 100 employees would not be required to file an EEO profile which means that since our whole administrative process is triggered by the device of a charging party, unless an individual files a charge we would not begin our administrative process nor indeed go in for investigation so we have a very small universe there.

Mr. VAN DEERLIN. Do you have an estimate as to the average time it takes to investigate a complaint?

Ms. WALSH. We have now and have been giving emphasis to what we call a 1 on 1 complaint and the charge is narrow in scope. We have what we call a fast track process. We can do this very often sometimes even by interrogatories. We have also what we call a predetermination settlement mechanism on that type of charge if the respondent is willing to go with that type of investigation. In some cases we have what we call a 30-day turnaround period.

However, if it requires an investigation where an investigator must be sent out and a thorough investigation done because the allegation is broader than the individual charge and goes into class and systemic allegations, that can take 6 months, and very often here again depending on the cooperation of the respondent. Sometimes it requires subpenas and that type of thing. It can go on for quite some time. It is very difficult for me to come up with a rule of thumb for you, Mr. Chairman.

Mr. VAN DEERLIN. To your knowledge have there been any referrals to the Justice Department under title VII?

Ms. WALSH. To my knowledge, no. Perhaps Ms. Jenkins the Deputy General Counsel, could respond.

Ms. JENKINS. We have no record of any referrals to the Department of Justice.

Mr. VAN DEERLIN. How would you characterize the recent EEO rules adopted by the FCC to which Chairman Wiley was addressing himself a few moments ago?

Ms. WALSH. Well, I am of course gratified to see all Federal agencies insisting that equal employment opportunity be part of the overall package. I think——

Mr. VAN DEERLIN. Well, this addresses itself more to the adjustment of the size of the station that they will consider.

Ms. WALSH. I know. That is going to be my second point, Mr. Chairman.

Mr. VAN DEERLIN. Excuse me.

Ms. WALSH. I think the area in which I am concerned is the fact that your smaller stations—and now we are talking of a good portion of those stations—because they have less than 15 employees do not come under EEOC because they have a small number. Obviously they are not being requested by FCC to handle any EEO profiles. This one concerns me because as you had pointed out earlier these were the small stations which in effect are the apprenticeship programs for minorities and women in the broadcasting area.

Now in the private sector, EEOC, of course does have authority over what we call apprenticeship programs. It is agreed that in a large industry your apprenticeship program is part of a large corporation with many employees but very often that has a very small number of apprentices but this apprenticeship program in this particular area since it is almost done on an individual station basis it seems to me from what I have heard today and from the other testimony I read is not covered by any legislation and at the same time is not covered under the procedures of FCC.

Mr. VAN DEERLIN. Majority counsel, Mr. Shooshan.

Mr. SHOOSHAN. Yes.

Mr. Chairman, I would like to return, if I could, with Ms. Walsh to the response to your question about the station in California that had 16 complaints filed against it. I don't think we can talk more specifically about that case because of the restraints of Pillsbury at this point, but to put it in a general posture would you not want to have a system at EEOC that would, to use the phrase that has been used earlier today, kickout, a situation where there were 16 complaints filed against a single station so that you could expedite consideration? Do you have such a policy? It didn't seem to come out that you did.

Ms. WALSH. Well, we do indeed try to consolidate at the district level all charges when it is against one employer. We do this whenever possible. It is not always possible if indeed charges are filed at different stages of time because we do treat on a first in-first out basis so that we might be in the investigation, indeed completed the investigation of one and a second charge then be filed. It then seems to us unfair in some cases unless there are very strong reasons for doing it to withhold relief to one individual. What very often will happen, too, when you resolve one charge against an employer, very often the other charges, the issues will be so closely associated that those other charges will then be very quickly resolved in consideration.

Mr. SHOOSHAN. Perhaps it would be inappropriate for you to address these cases on other than an individual basis but would you consider adopting the mechanism since these hearings are trying to get a little more cooperation among the agencies involved? Could you at this point at least notify the FCC that there may be a problem with this particular station?

Ms. WALSH. I frankly would have to check. We do have a mechanism for combining charges. Now when it comes to giving information and exchange of information between other agencies, I will have to check into that. Whether or not we have any agreement or letter of understanding with FCC, I do not know. How much we could give under the confidentiality clause, I do not know. Perhaps Ms. Jenkins could comment.

Ms. Jenkins, could you enlighten us on that?

Ms. JENKINS. We don't currently have a memorandum of understanding with the FCC as we do with some other agencies in this area which would allow us to exchange information when there are charges pending. I would like to add to the Chairman's comment about investigating all the charges together. We do have under title VII an administrative process and there are steps in the stages of the charges that have to be completed before they can be investigated so that some-

times it would curtail trying to investigate them all at the same time because there is some mandatory requirements before you get to the investigatory stage.

Mr. SHOOSHAN. Then to go back to a question that Chairman Van Deerlin was asking yesterday of the witnesses, would EEOC be willing to cooperate in serving on an interagency task force for the purposes of developing these kinds of cooperative relationships and working arrangements with other agencies so that needs could be identified and information could be exchanged?

Ms. WALSH. Indeed, yes, and we have letters of understanding with other agencies on an exchange of information. We have such an agreement with the Office of Revenue Sharing, we have such an agreement with the Office of Contract Compliance.

Mr. SHOOSHAN. Two last very quick questions. On page 6 of your statement you say that the courts have set up a procedure whereby you look at—in fact, in adjudicating your own cases you look at the makeup of the minority work force and compare it to the population in the surrounding community.

Ms. WALSH. Yes.

Mr. SHOOSHAN. In the case of educational broadcasters that come under your jurisdiction you interpret the surrounding community to be simply the city of license or do you look at the so-called community of license? In other words, the city of license for a station may be Washington, D.C., where you have 70, 75 percent of the population being black, for example, but it is serving an area where taken overall the number of minorities in the work force and in the population is significantly lower. What do you look at in that case?

Ms. WALSH. We look at that community from which any employer would draw its work force.

Mr. SHOOSHAN. And you have no special guidelines or rules when it comes to broadcasters?

Ms. WALSH. No. They fall into that same general rule of thumb.

Mr. SHOOSHAN. Do you think that is sufficient, putting them under the same general rule of thumb?

Ms. WALSH. Well, in many ways, yes. When you are talking in terms of an employment situation you have to also think of the employee. I realize broadcasters are different but most of your jobs, a good portion of jobs where they are at the lower or median paying scale you usually would get those from your surrounding area.

Mr. SHOOSHAN. Last question. As Mr. Pottinger indicated yesterday and you alluded to today, you can refer to the Justice Department for prosecution instances where the law of a State or local government is at issue, as I understand, or where a State entity is involved—in this case if the licensee, the holder of the license, were to be a State or a local government entity, you could refer to the Justice Department prosecution of a complaint under those circumstances.

Ms. WALSH. The prosecution. Under the statute we would conduct the administrative process.

Once again, Ms. Jenkins, you might want to add something to that.

Ms. JENKINS. Like any public broadcasting station that would be run by a State or local government, if there was a charge against it, we of course would refer it after conciliation had failed to the Depart-

ment of Justice for consideration but we would make the initial determination in the administrative process.

Mr. SHOOSHAN. What I am getting to is the concern that is being raised recently over the situation with certain Louisiana public broadcast stations where public interest groups have gone down on the scene and looked into it and they find that the problem there is not so much the station's willingness to do more with affirmative action but the fact that they must fill positions through the State civil service process which may be discriminatory. If a complaint of this nature were to come up to the Federal level, it would come to you first for investigation and an attempt at conciliation and then ultimately could go to the Justice Department for prosecution.

Ms. JENKINS. That is correct. I think the vice chairman alluded to the Federal regulatory schemes and the different court intepretations. What is needed is one Federal interpretation of what is required. You do have between some of the Federal agencies some differences in interpretation of what the statute requires.

Mr. SHOOSHAN. Thank you. Thank you, Mr. Chairman.

Mr. VAN DEERLIN. Does Minority Counsel have any questions?

Mr. HARDER. No, Mr. Chairman.

Mr. VAN DEERLIN. Thanks to both of you for being with us today.

Are these the final witnesses, Mr. Shooshan?

Mr. SHOOSHAN. Yes, Mr. Chairman.

Mr. VAN DEERLIN. This will terminate the hearing. I am certain that the subcommittee will have some recommendations to make to help meet the problems that we have been discussing. Meanwhile I would surely urge all licensees in the public broadcasting field to move as swiftly as possible to bring themselves in conformity not only with the law but with the spirit that is behind the law. Congress will not be moved to overlook derelictions much longer and it seems to me that voluntary compliance would be the ideal way to meet this very laudable American goal of equal opportunity employment.

Ms. WALSH. Thank you, Mr. Chairman.

[Whereupon, at 11:55 a.m., the subcommittee adjourned.]